UNITED STATES DISTRICT COU	JRT
SOUTHERN DISTRICT OF NEW	YORK

WAUSAU UNDERWRITERS INSURANCE COMPANY and AXIS SPECIALTY INSURANCE COMPANY,

INDEX NO.: 06 CV 3212 (VM)

AFFIDAVIT IN SUPPORT **OF CROSS-MOTION**

Plaintiffs,

- against -

QBE INSURANCE COMPANY and SCOTTSDALES INSURANCE COMPANY,

ECF CASE

Defendants.	
	•

WILLIAM H. BAVE, JR. being duly sworn deposes and states:

- 1. I am a partner with the law firm of Wilson, Bave, Conboy, Cozza & Couzens, P.C. attorneys for Defendant, QBE INSURANCE COMPANY ("QBE") and am fully familiar with the facts of this case.
- 2. This affidavit is in support of **QBE'S** cross-motion for summary judgment and in opposition to Plaintiff's motion seeking a declaration that *QBE* provide a defense to Barney Skanska Construction Co. ("SKANSKA") and New York Economic Development Corp. ("NYCEDC") in the underlying action of John Moore v. New York City Economic Development Corp., New York City Department of Transportation, Barney Skanska Construction Co., and Kel-Tech Construction, Inc., and a third-party action captioned New York City Economic Development Corp., New York City Department of Transportation, and Barney Skanska Construction Co. v. Arena Construction Co., Inc. pending in New York County State Supreme Court, Richmond County.
- 3. WAUSAU Plaintiff. UNDERWRITERS *INSURANCE* **COMPANY** ("WAUSAU") is the insurance carrier for Owen Steel Co., Inc. ("OWEN") who was the steel contractor on the project. OWEN subcontracted the work to John Moore's employer, A.J.

McNulty ("McNULTY") who was insured by Plaintiff, AXIS SPECIALTY INSURANCE CO. ("AXIS"). Barney Skanska Construction Co. ("SKANSKA") was the Construction Manager of the project. The insurance carrier for SKANSKA is not known by Defendant. The Defendant also does not possess a copy of the contract for SKANSKA. Despite seeking relief for SKANSKA in this motion, Plaintiff has not provided the insurance policy or contract so it could be determined the obligations of SKANSKA under its contract and the insurer under its policy for the underlying action.

- 4. Discovery other than automatic disclosure pursuant to Rule 26 has not been conducted. Attached as *EXHIBIT "A"* is Plaintiff's response to automatic disclosure. Rule 26(a)(1)D requires inspection and copying of "any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment."
- 5. The complaint in the underlying action alleges that *SKANSKA* was the Construction Manager for the project and as such assumed non-delegable duties under the Labor Law of the State of New York. Plaintiff in the underlying action alleges that he fell through an unguarded opening sustaining injuries. The Labor Law imposes a non-delegable duty on the Construction Manager to guard openings through which workers can fall.
- 6. **WAUSAU** and **AXIS** made a decision to defend and if necessary indemnify **NYCEDC** and **SKANSKA** since they are represented by the same law firm in the underlying action. (See appearances on deposition of John Moore, **EXHIBIT "B"**).
- 7. From the fact that *WAUSAU* and *AXIS* are Co-Defendants insuring different contractors represented by the same attorney it can be assumed that they have reached some accommodation between themselves as to payment of defense costs, indemnification and priority of coverage.

- 8. The attorneys for *NYCEDC* and *SKANSKA* commenced a third-party action against Arena Construction Co., Inc. The Plaintiffs in this action brought suit against Scottsdale Insurance Company, Arena's insurance carrier alleging that *NYCEDC* and *SKANSKA* are additional insureds on its policy. Arena provided masonry work on the project. Despite these allegations, Plaintiff's motion is not directed at Scottsdale but only *QBE*.
- 9. **QBE** insured **KEL-TECH**, a masonry contractor that entered into a take over agreement with **NYCEDC**. As stated in the affidavit of its project manager it was not working in the area where the Plaintiff in the underlying action claims (John Moore) he sustained an injury (Aff. of Thomas Lyons, **EXHIBIT "C"**). **KEL-TECH** has no Labor Law non-delegable duty toward John Moore since it did not employ him, supervise or control his work.
- 10. Plaintiff, WAUSAU, tendered the defense of NYCEDC and SKANSKA in correspondence dated December 13, 2004 and received by Defendant on December 17, 2004 (EXHIBIT "D"). Defendant, QBE, through its third-party administrator, Claims Service Bureau, denied the tender of defense and indemnification. Two grounds were stated; late notice of occurrence and the accident did not arise from KEL-TECH'S work (EXHIBIT "E"). There is no allegation that notice of disclaimer was untimely.
- 11. Plaintiff argues that Defendants' affirmative defense refers to claim or suit and not occurrence. Plaintiff was clearly on notice from the December 28, 2004 letter that Defendant was disclaiming for late notice of the occurrence as admitted by Mr. Morrissiey in paragraph 28 of his affidavit. While not employing the precise word "occurrence", Plaintiff's argument that it is waived is without merit. This is not a defense that is waived if not raised. FRCP Rule 12(h) In any event it was raised in the answer and in the initial submission joint letter (EXHIBIT "F").

- 12. As more fully discussed in the memorandum of law, failure to provide notice as soon as practicable is a basis to deny coverage to an insured. The rule applies with equal effect to additional insureds.
- 13. By its own admission, *WAUSAU* was aware of the claim on September 27, 2004. There is no indication of any efforts made by *WAUSAU* to investigate the claim other than to blame *NYC EDC* for the delay in notifying *QBE* of the occurrence. This failure to document any effort would indicate that none was undertaken. Plaintiff's submission on this issue does not begin to adequately explain the delay in notifying *QBE* of the occurrence.
- 14. The affidavit of Thomas Lyons (Exhibit C), project manager for *KEL-TECH* establishes the fact that *KEL-TECH* had not worked in the area where Mr. Moore claims the accident occurred for almost two months. It also submits proof that an employee of *SKANSKA* demolished a portion of *KEL-TECH'S* work and moved the planking in the elevator shaft that Moore fell down.
- 15. The additional insured endorsement requires that in order to confer addition insured status on a person or organization, the liability must arise from *KEL-TECH'S* work for that insured which in this case is *SKANSKA*.
- 16. John Moore testified at his deposition (Exhibit B) that he was working for A.J. McNulty (6)¹ on a crew of four or five men erecting columns and beams with the assistance of a crane (p. 16). The accident occurred as he stepped backwards on to a cinder block wall (p. 32). The wall started to crumble and he fell backwards through an open elevator shaft (p. 33). He fell approximately 2-1/2 floors (p. 36).
- 17. The testimony of Mr. Moore in conjunction with the affidavit of Mr. Lyons establishes that *KEL-TECH'S* work in the area had been substantially changed. The concrete

¹ () numbers refer to pages in John Moore's deposition

wall that Mr. Moore stepped on crumbled because *SKANSKA'S* employee demolished it. Mr. Moore fell through the opening of the elevator shaft because the *SKANSKA* employee moved the planks placed there by *KEL-TECH*.

- 18. **WAUSAU** and **AXIS** are seeking to shift the defense responsibility to the insurance carrier for a contractor (**KEL-TECH**) that bears no responsibility for the area where the accident occurred. Nor did **KEL-TECH** supervise or otherwise direct John Moore's work.
- 19. If the contract between *NYCEDC* and *SKANSKA* had been produced by the Plaintiff it would state that *SKANSKA* was required to name *NYCEDC* as an additional insured on its policy. If *SKANSKA*'s insurance policy was provided by Plaintiff, it would state that *SKANSKA* is required to defend *NYCEDC* in this action.
- 20. ARENA was a masonry contractor on this job who was working at the time of this accident and whose insurance policy names SKANSKA and NYCEDC as an additional insureds. Scottsdale's policy (EXHIBIT "H") contains an additional insured endorsement which provides that the insurance provided to the additional insured is primary in the event of a finding that ARENA is solely responsible for the occurrence. It is respectfully submitted that, if the limiting language in the QBE endorsement does not prevent QBE from a duty to defend as Plaintiff argues, Scottsdale should likewise be required to defend NYCEDC and SKANSKA for this occurrence.
- 21. It is respectfully submitted that there is no issue of fact as to Plaintiff's failure to provide notice to Defendant as soon as practicable. As a result, Defendant is entitled to judgment on its cross-motion for summary judgment against **SKANSKA**.
- 22. Defendant also submits that the law of New York is not settled as to the issue of when and under what circumstances an additional insured endorsement is triggered to provide coverage. The law in the Second Judicial Department where the underlying action is pending

requires that before the endorsement is triggered the occurrence must arise from the work of the contractor providing the additional insured coverage.

23. Since the occurrence did not arise from *KEL-TECH'S* work there is no coverage for *NYCEDC* under Defendant's insurance policy.

There H/Boxe &

WILLIAM H. BAVE, JR.

Sworn to before me this 9th day of November, 2006

YCHCA MANGU NOTARY PUBLIC

YESICA MANON
Notary Public, State of New York
No. 01MA6135821
Qualified in Bronx County
Commission Expires 10/24/20

EXHIBITS

Exhibit "A" Plaintiff's Response to Automatic Discovery

Exhibit "B" Deposition of John Moore

Exhibit "C" Affidavit of Thomas Lyons

Exhibit "D" Wausau tender letter dated December 13, 2004

Exhibit "E" CSB letter dated December 28, 2004

Exhibit "F" Initial submission joint letter

Exhibit "G" John Moore 50(h) testimony

Exhibit "H" Scottsdale policy

Exhibit "I" Accident report prepared by Barney Skanska USA

Exhibit "J" A.J. McNulty Accident report

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WAUSAU UNDERWRITERS INSURANCE COMPANY and AXIS SPECIALTY INSURANCE COMPANY,

Index No. 06 CV 3212 (VM)

Plaintiffs,

-against-

QBE INSURANCE CORPORATION and SCOTTSDALE INSURANCE COMPANY,

AUTOMATIC DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(1)

Defend	ants.
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MADAM/SIRS:

Plaintiffs WAUSAU UNDERWRITERS INSURANCE COMPANY ("Wausau") and AXIS SPECIALTY INSURANCE COMPANY ("AXIX"), by their attorneys, JAFFE & ASHER LLP, hereby discloses the following information and documents pursuant to Fed. R. Civ. P. 26(a)(1):

- (A) The following individuals are likely to have discoverable information relevant to supporting plaintiffs' claims for relief:
 - 1. James Dowlearn, c/o Wausau Insurance Companies, P.O. Box 4834, Syracuse, New York 13221. Tele. Phone No. 800-468-3000. Mr. Dowlearn has knowledge of Commercial General Liability policy, No. TZJ-Y91-433317-044, the contents of Wausau's claims file for the action entitled John Moore v. New York City Economic Development Corp., New York City Department of Transportation, Barney Skanska Construction Company, Kel Tech Construction

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By: WECCC

Inc., Index No. 13658/04, pending in the Supreme Court of the State of New York, County of Richmond, (the "Underlying Action") that is not subject to a privilege or the work-product doctrine, and the costs incurred by Wausau in defending the Underlying Action;

- 2. Marietta T. Aldrich, c/o AXIS Claims, 11680 Great Oaks Way, Alpharetta, Georgia 30022. Tele. Phone No. 678-746-9544. Ms. Aldrich has knowledge of the costs incurred by AXIS in defending the Underlying Action, Commercial General Liability policy, No. ACP704610, and the contents of AXIS's claims file for the Underlying Action that is not subject to a privilege or the workproduct doctrine;
 - The attorneys representing the parties in the Underlying Action; and 3.
 - 4. Unknown employees of defendants.
- (B) The following documents are in the possession, custody or control of plaintiffs that plaintiffs may use to support their claims:
 - 1. Commercial General Liability policy, No. TZJ-Y91-433317-044:
 - 2. Commercial General Liability policy, No. ACP704610
 - Statements regarding the attorneys' fees and other costs incurred to 3. defend the Underlying Action;
 - 4. The insurance policies issued by defendants:

- 5. Pleadings, motions, discovery demands and responses, documents produced in discovery, and transcripts of depositions taken in the Underlying Action;
- 6. The contract the New York City Economic Development Corp. (the "NYC EDC") entered into with Shroid Construction Inc. ("Shroid"), dated January 7, 2003;
- 7. The Takeover Agreement, dated June 22, 2004, whereby Kel-Tech agreed to complete the masonry work that was to have been completed by Shroid for the Project;
- 8. The contract the NYC EDC entered into with Arena, pursuant to which Arena agreed to provide masonry work for the Project;
- 9. Other non-privileged and non work-product doctrine documents contained within Wausau's claims file for the Underlying Action;
- 10. Invoices and statements received regarding costs incurred to defend the Underlying Action;
- 11. Correspondence with defendants regarding the Underlying Action; and
- 12. Other non-privileged and non work-product doctrine documents contained within AXIS's claims file for the Underlying Action.
- (C) AXIS has paid \$18,059.39 for the defense of the Underlying Action.

 Wausau has paid \$5,320.00 for the defense of the Underlying Action. Plaintiffs seek recovery of

all costs incurred to defend the Underlying Action, past present, and future. Plaintiffs further seek a declaratory judgment regarding their rights and defendants' obligations with respect to the Underlying Action.

(D) Not applicable.

Dated: New York, New York August 7, 2006

Yours, etc.,

JAFFE & ASHER LLP

Marshall T. Potashner (MTP-3552)

MPotashner@jaffeandasher.com

Attorneys for Plaintiffs

WAUSAU UNDERWRITERS

INSURANCE COMPANY and

AXIS SPECIALTY INSURANCE

COMPANY

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TO: WILSON, BAVE, CONBOY, COZZA & COUZENS, P.C.

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QBE INSURANCE COMPANY

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KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, LLP

Attorneys for Defendant

SCOTTSDALE INSURANCE COMPANY

69 East Jericho Turnpike

Mineola, New York 11501

(516) 742-3470

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF RICHMOND

JOHN MOORE,

Plaintiff,

-against-

Index No. 13658/04

NEW YORK CITY ECONOMIC DEVELOPMENT CORP.,
NEW YORK CITY DEPARTMENT OF TRANSPORTATION,
BARNEY SKANSKA CONSTRUCTION CO., and KEL
TECH CONSTRUCTION INC.,

Defendants.

NEW YORK CITY ECONOMIC DEVELOPMENT CORP.,
NEW YORK CITY DEPARTMENT OF TRANSPORTATION,
and BARNEY SKANSKA CONSTRUCTION CO.,

Third-Party Plaintiffs,

-against-

ARENA CONSTRUCTION CO., INC.,

Third-Party Defendant.

BARRISTER REPORTING SERVICE, INC.

120 Broadway

New York, N.Y. 10271

212-732-8066

1		
2	APPEAR	ANCES:
3	SACKS	& SACKS, LLP
		Attorneys for Plaintiff
4		150 Broadway
		4th Floor
5		New York, New York 10038
6	BY:	ANDREW R. DIAMOND, ESQ.
7		
	RUBIN	, FIORELLA & FRIEDMAN, LLP
8		Attorneys for Defendants/
_		Third-Party Plaintiffs
9		NEW YORK CITY ECONOMIC DEVELOPMENT
		CORP., NEW YORK CITY DEPARTMENT OF
10		TRANSPORTATION and BARNEY SKANSKA
		CONSTRUCTION CO.
11		292 Madison Avenue
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13	BY:	PAUL KOVNER, ESQ.
14		
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		Suite 203
17		White Plains, New York 10601
18	BY:	MATTHEW J. MC DERMOTT, ESQ.
19		
	KRAL,	CLERKIN, REDMOND, RYAN, PERRY &
20	GIRVA	N, ESQS.
		Attorneys for Third-Party
21		Defendant
		ARENA CONSTRUCTION CO., INC.
22		170 Broadway
	1 4	5th Floor
23		New York, New York 10038
24	BY:	MICHAEL VERAS, ESQ.
25		xxxxx

•	1
. ,	STIPULATIONS
3	
4	
5	hereto, that all rights provided by the C.P.L.R.,
6	including the right to object to any question
7	except as to the form, or to move to strike any
8	testimony at this examination, are reserved; in
9	addition, the failure to object to any question of
10	to move to strike testimony at this examination
11	shall not be a bar or waiver to make such motion
12	at, and is reserved for, the trial of this action.
13	IT IS FURTHER STIPULATED AND AGREED that
14	the within examination may be sworn to by the
15	witness being examined before a Notary Public
16	other than the Notary Public before whom this
17	examination was begun, but the failure to do so or
18	to return the original of this examination to
19	counsel shall not be deemed a waiver of the rights
20	provided by Rules 3116 and 3117 of the C.P.L.R.,
21	and shall be controlled thereby.
22	
23	IT IS FURTHER STIPULATED AND AGREED that the filing and sealing of the
24	the filing and sealing of the original of this examination are waived.
25	TITLE WAIT VEU.

XXXXX

1 2 J O H N MOORE, 3 having been first duly sworn before a Notary Public of the State of New 4 5 York, was examined and testified as 6 follows: 7 8 EXAMINATION BY 9 MR. KOVNER: 10 Q. Please state your name for the record. 11 Α. John Moore. 12 Q. What is your address? 421 Walnut Street, Port Monmouth, New 13 Α. 14 Jersey 07748. 15 Good morning, Mr. Moore. Ο. I'm Paul Kovner. I represent the defendants, New York 16 City Economic Development Corp., New York 17 City Department of Transportation and Barney 18 Skanska Construction Inc., in connection with 19 the lawsuit that you've filed arising out of 20 your accident back in September of 2004. 21 22 I'll ask you a series of questions 23 today. If you don't understand any of my questions, please let me know and I'll be 24

happy to rephrase the question for you.

- 1 Moore
- 2 that understood?
- 3 You have to answer with words because

- 4 the court reporter is not permitted to take
- 5 down anything but a verbal response. You
- 6 cannot nod your head or use hand gestures.
- 7 Is that understood?
- 8 A. Yes.
- 9 Q. What is your date of birth?
- 10 A. 9/16/55.
- 11 Q. What is your Social Security number?
- 12 A. 112-48-3973.
- 13 Q. Have you ever been convicted of a
- 14 crime?
- 15 A. No.
- 16 Q. What's the highest level of education
- 17 that you've completed?
- 18 A. Thirteen.
- 19 Q. When did you last attend school?
- 20 A. 1975.
- 21 Q. Is that when you were in college?
- 22 A. Yes.
- Q. Where did you go to college?
- 24 A. Union College.
- 25 Q. In New Jersey?

1 Moore

- 2 A. Barberville (phonetic), Kentucky.
- 3 Q. In 2004 you were an ironworker; is
- 4 that correct?
- 5 A. Yes.
- 6 Q. Were you a member of a union?
- 7 A. Yes.
- 8 Q. What union?
- 9 A. Local 40.
- 10 Q. When for the first time did you become
- 11 a member of Local 40?
- 12 A. '78.
- 13 Q. Have you worked more or less
- 14 continuously as an ironworker since that
- 15 time?
- 16 A. Yes.
- 17 Q. By whom were you employed in September
- .18 of 2004?
- 19 A. A.J. McNulty.
- 20 Q. When for the first time were you
- 21 employed by McNulty?
- 22 A. For that job?
- 23 Q. Yes.
- 24 A. I was there four days. So, four days
- 25 before the date of the accident.

1	Moore
2	Q. The accident occurred on your fourth
3	day on the job or the fifth day?
4	A. I think the fourth day.
5	Q. Were you ever employed by McNulty on
6	any other job sites?
7	A. Yes, but I can't remember where.
8	Q. For approximately how long a period of
9	time were you employed by McNulty at other
10	sites?
11	MR. DIAMOND: Are you asking if
12	it was a continuous employment before
13	those four days or anytime in his
14	career?
15	MR. KOVNER: Anytime in his
16	career.
17.	A. I'm not sure of those exact dates.
18	Q. Can you tell me the year in which you
19	were first employed by McNulty?
20	A. I think in the Eighties.
21	Q. Who did you work for immediately
22	before you began work for McNulty at the job
23	site where you had your accident?
24	A. I don't remember.
25	Q. Are you taking any medication which

- 1 Moore
- 2 affects your memory today?
- 3 A. No.
- 4 Q. Are you taking any medication at all?
- 5 A. Yes.
- 6 Q. What medication are you taking
- 7 currently?
- 8 A. You need the names of them?
- 9 Q. Yes.
- 10 A. Kaletra, K-A-L-E-T-R-A, Viread,
- V-I-R-E-A-D.
- 12 Q. Anything else?
- 13 A. There's one other, Sustiva,
- 14 S-U-S-T-I-V-A.
- 15 Q. Who prescribed Kaletra?
- 16 A. Dr. Gornish, G-O-R-N-I-S-H.
- 17 Q. What is his specialty?
- 18 A. HIV.
- 19 Q. For how long have you seen Dr.
- 20 Gornish?
- 21 A. About seven years now.
- 22 Q. Were you diagnosed as HIV positive in
- 23 or about 1989?
- 24 A. No. It was 1987.
- 25 Q. You've been HIV positive since then?

1 Moore

- 2 A. Yes.
- 3 Q. Were you treated for being HIV
- 4 positive by anyone prior to Dr. Gornish?
- 5 A. No. Well, I went to a clinic, but I'm

- 6 not sure of the exact doctor that was dealing
- 7 with me.
- 8 Q. What's the name of the clinic?
- 9 A. A-Team. Jersey Shore Medical. It's
- 10 in Neptune, New Jersey.
- 11 Q. Is that the Jersey Shore Medical
- 12 Crisis Center or is that something else?
- 13 A. No. It's just Jersey Shore Medical
- 14 Center.
- 15 Q. This is in Neptune?
- 16 A. Yes.
- 17 Q. Can you tell me the year in which you
- 18 first went to that clinic?
- 19 A. I think it was probably '87.
- 20 Q. Did you go to that clinic from time to
- 21 time until you switched to Dr. Gornish?
- 22 A. Yes.
- MR. KOVNER: Counsel, I don't
- 24 believe we received an authorization
- for A-Team or whatever the precise

1		Moore
2		name of that clinic is. We would
3		request that.
4		MR. DIAMOND: Any requests you
5		make today, send them to us in writing
6		and we'll take them under advisement.
7		MR. VERAS: A request made by
8		one is a request by all.
9	REQUES	T NOTED:
10	Q.	Where is Dr. Gornish located?
11	A.	Neptune, New Jersey.
12		MR. KOVNER: Same request with
13		respect to Dr. Gornish for an
14		authorization for those records.
15	REQUES	T NOTED:
16	Q.	When is the last time prior to today
17	that y	ou saw Dr. Gornish?
18	A.	About four months ago.
19	Q.	What, if anything, did Dr. Gornish
20	tell y	ou about your condition at that visit?
21	A.	That I'm doing really well.
22	Q.	Do you have an appointment scheduled
23	to see	Dr. Gornish in the future?
24	Α.	October 2nd.
25	Q.	Do I understand that you see him

Moore Moore

- 2 approximately every six months?
- 3 A. I try to make it four months, but
- 4 sometimes it goes to six.
- 5 Q. Have you seen Dr. Gornish with
- 6 approximately the same frequency during the
- 7 seven years that he's been treating you?
- 8 A. She.
- 9 Q. She. Excuse me.
- 10 A. Yes, pretty much. Sometimes I'll see
- 11 her more often depending upon if I have
- 12 any --

- 13 Q. Any what?
- 14 A. Any cold or anything.
- 15 Q. Who prescribed Viread?
- 16 A. Dr. Gornish, and Sustiva as well.
- 17 Q. How frequently do you take Kaletra?
- 18 A. Twice a day.
- 19 Q. How frequently do you take Viread?
- 20 A. Once a day.
- 21 Q. How frequently do you take Sustiva?
- 22 A. Once a day.
- 23 Q. Have you ever been treated for heroin
- 24 abuse?
- 25 A. Yes.

- 1 Moore
- 2 Q. When for the first time were you
- 3 treated for heroin abuse?
- 4 A. 20 years ago when I found out about
- 5 the HIV.
- 6 Q. Did your heroin use precede your
- 7 diagnosis of HIV positive?
- 8 A. Yes.
- 9 Q. Do you still use heroin today?
- 10 A. No, I don't.
- 11 Q. Were you using heroin in or about
- 12 September of 2004?
- 13 A. No. I got straight when I went for
- 14 treatment, and I stayed straight until I
- 15 fell. Then I had a problem with the
- 16 painkillers.
- 17 Q. When did you go for treatment?
- 18 A. 1987.
- 19 Q. Where did you go for treatment?
- 20 A. New Hope. I don't know what they call
- 21 it. New Hope Rehabilitation Center.
- 22 Q. Where is that center located?
- 23 A. Marlboro, New Jersey.
- 24 Q. Was that a residential treatment
- 25 facility?

:	1	Moore	13
2	2 A.	Yes.	
3	g.	For how long did you remain in New	
4	Норе	in 1987?	
5	A.	28 days.	
6	Q.	Did you ever use heroin at anytime	
7	afte:	r being released from New Hope?	
8	A.	No.	
9	Q.	Did you ever use heroin at anytime	
10	whil∈	you were working as an ironworker?	
11	A.	No.	
12	Q.	Did you ever tell Dr. Hausknecht that	
13	you w	ere having a problem with heroin?	
14		MR. DIAMOND: Note my objection	
15		to form. Since he treated with him?	
16		MR. KOVNER: Yes.	
17	A.	What do you mean? In my previous	
18	life?		
19	Q.	Dr. Hausknecht is one of the	
20	physic	ians by whom you've been treated as a	
21	result	of the injuries that you sustained in	
22	this a	ccident, correct?	
23	A.	Yes.	
24	Q.	You've seen him on various times?	

Α.

Right.

- 1 Moore
- 2 Q. Did you ever tell him in words or
- 3 substance that during the time of your
- 4 treatment you were abusing heroin?
- 5 A. No.
- 6 Q. Did you ever tell him that you were
- 7 using heroin?
- 8 A. No.
- 9 Q. Did your fiancee ever tell Dr.
- 10 Hausknecht that you were using heroin?
- MR. DIAMOND: To your knowledge.
- 12 Q. In your presence.
- 13 A. No.
- 14 Q. Did there ever come a time after being
- 15 released from New Hope that you were treated
- 16 in any other facility for heroin?
- 17 A. No.
- 18 Q. Did Dr. Gornish or any of the
- 19 physicians at the clinic that you attended in
- 20 Neptune ever tell you in words or substance
- 21 that your HIV positive condition may have
- 22 been due in part to your use of heroin?
- 23 A. Yes.
- 24 Q. Can you tell me what you were told in
- 25 that regard?

- 1 Moore
- 2 A. That I was probably infected from a
- 3 dirty needle.
- 4 Q. Who was the McNulty foreman on the job
- 5 at the Staten Island Ferry Terminal that you
- 6 were engaged in at the time of the accident?
- 7 A. I don't remember.
- 8 Q. Does the name Norm Price refresh your
- 9 recollection?
- 10 A. Not really.
- 11 Q. Do you remember testifying at a 50-H
- 12 Hearing in connection with your accident?
- 13 A. Last year.
- 14 Q. Were you represented by counsel?
- 15 A. Yes.
- 16 Q. Did you tell the truth to the best of
- 17 your knowledge and recollection at that time?
- 18 A. Yes.
- 19 Q. Just as you're doing today, correct?
- 20 A. Yes.
- 21 Q. Were you taking any medication at the
- 22 50-H Hearing that affected your memory?
- 23 A. No.
- 24 Q. Can you tell me in general terms the
- 25 nature of the work that you were doing at the

- 1 Moore
- 2 St. George's Ferry Terminal before the
- 3 accident occurred? I'm not talking about the
- 4 day of the accident. On the prior date.
- 5 A. We were erecting columns and beams,
- 6 shaking out trucks that were bringing in
- 7 iron.
- 8 Q. For the benefit of a jury of laypeople
- 9 can you tell us what you mean by shaking out
- 10 trucks?
- 11 A. Unloading it.
- 12 Q. There was a crane operator who was
- 13 assisting you in placing beams?
- 14 A. Yes.
- 15 Q. These are steel beams?
- 16 A. Yes.
- 17 Q. They weigh many thousands of pounds?
- 18 A. I'm not sure. They've heavy.
- 19 Q. You work in a crew; is that correct?
- 20 A. Yes.
- 21 Q. Is it a four man crew?
- 22 A. Usually four to five man crew.
- 23 Q. How many people were in the crew on
- 24 the day of the accident?
- 25 A. I want to say four or five.

- 1 Moore
- 2 Q. Can you identify the members of the
- 3 crew with whom you were working on the day of
- 4 the accident?
- 5 A. Only two I remember.
- 6 Q. Okay.
- 7 Can you tell us their names?
- 8 A. Mike and Bob.
- 9 Q. What's Mike's last name?
- 10 A. Grecko (phonetic).
- 11 Q. What's Bob's last name?
- 12 A. I don't know that.
- 13 Q. The reporter will leave a space in the
- 14 transcript. When you execute the transcript,
- if you remember the name, with your counsel's
- 16 permission you can fill in that name, please.
- 17 INSERT:
- 18 Q. Can you tell me who the third member
- 19 of the crew was?
- 20 A. I don't remember.
- 21 Q. Does Jim Sullivan refresh your
- 22 recollection?
- 23 A. Sort of.
- 24 Q. You think that's the other person you
- were working with that day?

- 1 Moore
- 2 A. It could have been.
- 3 Q. Was this the same group of men that
- 4 you were working with on the three or four
- 5 days before the date of the accident?
- 6 A. Yes.
- 7 Q. You were doing essentially the same
- 8 thing or things on those days?
- 9 A. It can vary day-to-day.
- 10 Q. On the day of the accident before you
- 11 actually began work, did you have a safety
- 12 meeting?
- 13 A. No.
- 14 Q. Did you have a safety meeting at
- 15 anytime before the day of the accident?
- 16 A. No.
- 17 Q. Did anyone from McNulty give you any
- 18 instructions on safety at this particular job
- 19 site at anytime before the accident?
- 20 A. Not that I remember.
- 21 Q. Do you know the company Barney Skanska
- 22 Construction Company?
- 23 A. I think I worked for them a couple of
- 24 times.
- 25 Q. Was Barney Skanska the construction

1	Moore
2	manager in connection with the work that you
. 3	were doing at the Staten Island Ferry
4	Terminal?
5	MR. DIAMOND: Note my objection
6	to the form. You can answer.
7	A. I'm not sure.
8	Q. Prior to the day of your accident did
9	you receive any instructions from anyone with
10	Barney Skanska as to safety at the site?
11	A. No.
12	MR. DIAMOND: Note my objection
13	to the last question.
14	Q. Did you receive any instructions from
15	anyone with Barney Skanska on the morning of
16	the accident before it occurred?
17	MR. DIAMOND: Note my objection.
18	You haven't established with this
19	witness that he knows that they were
20	on the site. He might have heard of
21	the name. He might have worked for
22	them in the past.
23	MR. KOVNER: It's a very simple
24	question. The answer is either yes or
25	no.

1		Moore
2		MR. DIAMOND: It may very well
3		be. He can answer over my objection.
4	Q.	Do you want the question read back?
5	Α.	Yes.
6		(Whereupon the record was read
. 7		back
8		by the reporter.)
9	A.	No.
10	Q.	What day of the week did the accident
11	occur?	
12	A.	I don't know.
13	Q.	What was the date?
14	A.	9/16.
15	Q.	Did you work several days in a row
16	before	the accident?

- 17 I'm just trying to see if we can
- 18 figure out another way to determine -- you
- 19 said you didn't know what day of the week it
- 20 was, but if it was a Thursday, then obviously
- 21 you worked several days in a row, as opposed
- 22 to if it was a Monday, then it would be a
- 23 weekend.
- 24 A. If it was a Thursday, I worked several
- 25 days in a row.

- 1 Moore
- 2 Q. Can you tell us whether you worked
- 3 several days in a row before the accident
- 4 occurred or whether it was a weekend?
- 5 A. I don't remember.
- 6 Q. On any day before September 16th of
- 7 2004 while you were working at this same site
- 8 did you wear a safety harness?
- 9 A. No.
- 10 Q. Did any of the other members of your
- 11 team wear a safety harness while working at
- 12 this site before September 16th of 2004?
- 13 A. I don't know.
- 14 Q. On the morning of September 16th of
- 15 2004 before you began work, did a supervisor
- 16 with McNulty tell you in words or substance
- 17 that you should wear a safety harness on the
- 18 job?
- 19 A. No, not that I recall.
- 20 Q. Did you receive instructions to that
- 21 effect from anyone with McNulty on any day
- 22 prior to September 16th of 2004 at this site?
- 23 A. No.
- 24 Q. Did you receive instructions from
- 25 anyone else at this job site to wear a safety

- 1 Moore
- 2 harness on September 16th of 2004 --
- 3 A. No.
- 4 Q. -- or on any of the prior days that
- 5 you were at this site?
- 6 MR. DIAMOND: Note my objection
- 7 as to asked and answered, but you can
- 8 answer.
- 9 A. No.
- 10 Q. Can you tell us where you were working
- 11 at the site on September 16th of 2004?
- 12 A. I'm not sure I know what you mean.
- 13 Q. Can you tell me in general where you
- 14 were working at the time of the accident?
- 15 A. Staten Island Ferry.
- 16 Q. The terminal?
- 17 A. Yeah, I guess it was the terminal.
- 18 Q. On Staten Island side or on the
- 19 Manhattan side?
- 20 A. Staten Island.
- 21 Q. What were you engaged in building?
- 22 A. I'm not even sure.
- 23 Q. Do you have knowledge as to what was
- 24 being built at the site?
- 25 A. I think it was -- I don't know if it

- 1 Moore
- 2 was renovations or if it was where the ferry
- 3 had crashed. I'm not sure.
- 4 Q. Were you working at what is known as
- 5 the west entrance of that terminal?
- 6 A. I'm not sure.
- 7 MR. DIAMOND: Note my objection.
- 8 Q. Were you working in the vicinity of an
- 9 elevator shaft?
- 10 A. Yes.
- 11 Q. Was that elevator shaft designed to
- 12 enable workers to get construction materials
- 13 up to higher levels of the site?
- 14 MR. DIAMOND: Note my objection
- 15 to the form. Are you asking him if
- 16 that's its purpose?
- 17 Q. What was the purpose of the elevator
- 18 shaft?
- 19 A. I guess for elevators.
- 20 Q. Was there an elevator which was
- 21 working at the site on or before September
- 22 16th of 2004?
- 23 A. Was there an elevator in there?
- 24 Q. Yes.
- 25 A. No.

- 1 Moore
- 2 Q. Was the shaft for the elevator under
- 3 construction at the site?
- 4 A. I'm not sure.
- 5 Q. Were you and your team members
- 6 connecting beams in the vicinity of the
- 7 elevator shaft on September 16th of 2004
- 8 before your accident occurred?
- 9 A. Yes.
- 10 Q. Were you doing the same thing on the
- 11 last day that you worked at the site before
- 12 the day of the accident?
- 13 A. No.
- 14 Q. What were you doing the day before?
- 15 A. Unloading trucks, I think.
- 16 Q. At anytime prior to your accident did
- 17 you learn that part of the elevator shaft had
- 18 to be removed to enable you and the other
- 19 members of your team to place the steel
- 20 beams?
- 21 A. Did I know that?
- 22 Q. Yes.
- 23 A. No. I don't think so.
- 24 Q. Was the elevator shaft made of cinder
- 25 block, concrete cinder block?

- 1 Moore
- 2 A. Yes.
- 3 Q. Had you stepped on any portion of the
- 4 elevator shaft, the wall around the elevator
- 5 shaft, on any day prior to the day of your
- 6 accident?
- 7 A. No.
- 8 Q. On any day prior to September 16th of
- 9 2004 did you take note that the top of the
- 10 elevator shaft was not covered over?
- 11 MR. DIAMOND: Can you just read
- 12 that question back?
- 13 (Whereupon the record was read
- 14 back
- by the reporter.)
- 16 A. I don't remember to tell you the
- 17 truth.
- 18 Q. At anytime on September 16th of 2004
- 19 before you had your accident, did you take
- 20 note that the top of the elevator shaft was
- 21 open?
- 22 A. I just knew the side was open.
- 23 Q. What do you mean by the side was open?
- 24 A. Where the door goes.
- 25 Q. On what level?

- 1 Moore
- 2 A. Right where you're walking.
- 3 Q. On the street level?
- 4 A. We weren't on the street.
- 5 Q. How high up above ground were you on
- 6 September 16th of 2004?
- 7 A. I was on ground level next to the
- 8 elevator shaft. We were putting in a beam.
- 9 Q. What do you mean when you say ground
- 10 level?
- 11 MR. DIAMOND: I don't think you
- guys are on the same page.
- MR. KOVNER: We're not. I
- 14 understand.
- 15 Q. Is it correct that just before your
- 16 accident occurred you and your co-workers
- were trying to place a beam?
- 18 A. Yeah. We were trying to put a beam
- 19 in.
- 20 Q. You were guiding the beam into the
- 21 slot, correct?
- 22 A. Yes. I was pushing the beam in on the
- 23 flange, like trying to push it in. It was
- 24 hooked into the crane.
- 25 Q. The beam was hooked into the crane and

	27
1	Moore
2	you were trying to guide it into the slot so
3	your co-workers could bolt it into place?
4	MR. DIAMOND: Objection to form.
5	You're testifying for him. The
6	guiding of the beam into the slot was
7	nothing that he said. I know you're
8	trying to make this faster, but right
9	on this issue maybe he wasn't doing
10	that.
11	MR. KOVNER: I can ask him the
12	question in that form if I choose to,
13	but I'll adopt your suggestion this
14	time.
15	MR. DIAMOND: Thank you.
16	Q. Can you tell me what you were doing
17	before your accident occurred?
18	A. I was helping push a beam into where
19	it was going.
20	Q. Of the co-workers that you've
21	identified was there someone standing close
22	to you who was also trying to guide the beam
23	into where it was going?
24	A. I think Bob was.
25	Q. Where was the beam going into?

- 1 Moore
- 2 A. Connections on the wall.
- 3 Q. Is the connection known as a slot?
- 4 A. It can be.
- 5 Q. Is that a term that you as an
- 6 ironworker are familiar with?
- 7 A. Yeah. We use that term, slot.
- 8 Q. Were the other two of your co-workers
- 9 next to the wall or the slot so that when the
- 10 beam was guided into place, they could then
- 11 bolt it in?
- 12 A. Yes.
- 13 Q. As you were engaged in this process
- 14 where were you standing?
- 15 A. I was standing in front of the
- 16 elevator shaft.
- 17 Q. How high above the ground were you?
- 18 A. I was standing on the ground in front
- 19 of the elevator shaft.
- 20 Q. Were you standing on a scaffold?
- 21 A. No. I was standing on concrete.
- 22 Q. The concrete of the elevator shaft?
- 23 A. Of the ground.
- 24 Q. When you say the ground, are you
- 25 referring to the street or something else?

1	
<u> </u>	Moore

- 2 A. No. There's ground. The beam was
- 3 going in here, and right next to here was the
- 4 elevator shaft.
- MR. DIAMOND: We can't see what
- 6 your hands are doing. He just wants
- 7 to know what you were standing on.
- 8 A. Concrete.
- 9 Q. Was the concrete that you were
- 10 standing on some height above the street
- 11 level?
- MR. DIAMOND: He wants a level
- of where you were working.
- 14 A. I was on the level above two
- 15 subbasements.
- 16 Q. You know what we mean when we say the
- 17 street, right? The street is where we're on
- 18 when we walk out of the building.
- 19 A. Yes. It's a little more complicated.
- 20 Q. How high above the street were you
- 21 when you were standing trying to guide the
- 22 beam?
- 23 A. One floor.
- 24 Q. One floor above, and you were standing
- 25 on concrete?

end of the beam, and I'm facing the

middle of the beam.

24

1	
T	Moore

- 2 MR. DIAMOND: Off the record.
- 3 (Discussion held off the
- 4 record.)
- 5 Q. So, in essence you're standing facing
- 6 the length of the beam. So, you're
- 7 perpendicular to the beam?
- 8 A. Does that mean like a T?
- 9 Q. Yes.
- 10 A. Okay.
- 11 Q. There are co-workers on opposite ends
- 12 of the beam who are going to bolt it into
- 13 place on both ends?
- 14 A. Yes.
- 15 Q. Was Bob standing next to you facing
- 16 the beam as well?
- 17 A. I don't remember where Bob was. I'm
- 18 looking at the beam trying to help push the
- 19 beam in.
- 20 Q. Where with relationship to where you
- 21 were standing was the cinder block wall
- 22 around the elevator shaft?
- 23 A. Right behind me.
- 24 Q. When you say you were one floor above
- 25 the street, can you tell me in feet how high

- 1 Moore
- 2 above the street you were?
- MR. DIAMOND: Estimate.
- 4 A. 12 feet. A floor.
- 5 Q. As you were trying to guide the beam
- 6 into place did there come a time when you
- 7 took a step off of the concrete onto the
- 8 cinder block wall around the elevator shaft?
- 9 MR. DIAMOND: Objection to form.
- 10 You can answer, if you can.
- 11 A. I'm on the concrete the whole time. I
- 12 step back and I fall into the elevator shaft.
- 13 Q. Did you step back with one foot or
- 14 both feet?
- 15 A. I guess one foot before the other.
- 16 Q. Did you step back with your right foot
- 17 or your left foot?
- 18 A. Oh, I don't remember.
- MR. DIAMOND: Give me one second
- 20 before you ask the next question.
- 21 (Brief recess taken.)
- 22 Q. When you stepped back with whichever
- 23 foot it was, did you step on the top of the
- 24 cinder block wall around the elevator shaft?
- 25 A. Yes.

- 1 Moore
- 2 Q. What happened next?
- 3 A. The ground started crumbling and I
- 4 fell.
- 5 Q. You fell into the open elevator shaft?
- 6 A. Yes.
- 7 Q. Down to the ground below?
- 8 A. Yes.
- 9 Q. Can you tell me what you mean when you
- 10 said the ground started to shake?
- MR. DIAMOND: Objection.
- 12 Crumble.
- 13 Q. Crumble. Excuse me.
- 14 A. I'm pushing the beam. I step
- 15 backwards, and the concrete under my feet
- 16 started to crumble, and when it crumbled, I
- 17 fell backwards, and I just remember trying to
- 18 reach for something and there was nothing but
- 19 air. Then I fell upside down.
- 20 Q. What do you mean by you fell upside
- 21 down? You fell backwards head first, is that
- 22 what you mean?
- 23 A. Yes. I remember reaching for air. I
- 24 mean trying to reach for something to grab,
- 25 and there was nothing but air.

- 1 Moore
- 2 Q. Can you tell us how much time elapsed
- 3 from the time you stepped back onto the top
- 4 of the cinder block wall around the elevator
- 5 shaft until you fell? Was it a matter of
- 6 seconds?
- 7 A. Yes. It happened real fast.
- 8 MR. DIAMOND: Note the snapping
- 9 of the fingers.
- 10 Q. Was it more or less than ten seconds?
- MR. DIAMOND: From the moment he
- 12 stepped onto the cinder block wall?
- 13 Q. From the moment you stepped onto the
- 14 top of the cinder block wall until the moment
- 15 you fell.
- 16 A. Seconds.
- 17 Q. Less than ten seconds?
- 18 A. I would say.
- 19 Q. Did you land on the ground or some
- 20 material of some kind?
- 21 A. On the ground.
- 22 Q. How much time elapsed before someone
- 23 came to where you had landed?
- 24 A. I don't know.
- 25 Q. Did you lose consciousness?

- 1 Moore
- 2 A. Yes.
- 3 Q. What time was it approximately when
- 4 you regained consciousness?
- 5 A. I'm not sure.
- 6 Q. When you regained consciousness, were
- 7 you on the ground at the bottom of the
- 8 elevator shaft?
- 9 A. Yes.
- 10 Q. Who else, if anyone, was there when
- 11 you regained consciousness?
- 12 A. Paramedic.
- 13 Q. Were any of your co-workers there
- 14 along with the paramedic when you regained.
- 15 consciousness?
- 16 A. Yes.
- 17 O. Who?
- 18 A. Mike.
- 19 Q. Was Bob there?
- 20 A. I think it was just Mike and the
- 21 paramedic.
- 22 Q. One paramedic or more than one?
- 23 A. Excuse me?
- Q. One paramedic or more than one?
- 25 A. It was just one that I remember.

- 1 Moore
- Q. When you regained consciousness, did
- 3 you have a conversation with the paramedic?
- 4 A. He just basically told me not to move,
- 5 I think.
- 6 Q. Did you say anything to Mike?
- 7 A. I don't remember.
- 8 Q. Did he say anything to you?
- 9 A. Don't move.
- 10 Q. Were you bleeding from any part of
- 11 your body?
- 12 A. My head and my arm.
- 13 Q. Which arm?
- 14 A. My right arm.
- 15 Q. How much of a distance did you fall?
- 16 A. Was I told or did I know?
- 17 Q. I presume at the moment you fell you
- 18 had no idea how far you were falling; is that
- 19 fair to say?
- 20 A. Yeah.
- 21 Q. Did you ever come to learn how far you
- 22 fell?
- 23 A. Yeah. It was two and a half floors.
- 24 Q. There was a subbasement that the
- 25 elevator shaft extended to?

- 1 Moore
- 2 A. Yes.
- 3 Q. So, in total you fell two and a half
- 4 floors?
- 5 A. Yes.
- 6 Q. Can you tell me in feet approximately
- 7 how far you fell?
- 8 A. I think it was 23 feet.
- 9 Q. What was the source of your knowledge
- 10 about that?
- 11 A. I can't really remember who told me.
- 12 Somebody told me in the hospital.
- 13 Q. Have you seen at anytime prior to
- 14 today any photographs of the area that you
- were working at when this accident occurred?
- 16 A. No.
- MR. KOVNER: Counsel, you do not
- have any photographs?
- MR. DIAMOND: We do not.
- 20 Q. What parts of your body were in pain
- 21 when you regained consciousness?
- 22 A. My head, my arm, my shoulder, my
- 23 knees, my back, my ankles.
- Q. Prior to September 16th of 2004 had
- 25 you been involved in any accidents in which

38.

- 1 Moore
- 2 you injured your head or your arms?
- 3 A. No.
- 4 Q. Prior to the date of this accident had
- 5 you been involved in any accidents in which
- 6 you injured your shoulders or your knees?
- 7 A. No.
- 8 Q. Prior to September 16th of 2004 had
- 9 you been involved in any accidents in which
- 10 you injured your back or your ankles?
- 11 A. No.
- 12 Q. Since this accident occurred have you
- 13 been involved in any other accident in which
- 14 you hurt any of those portions of your body?
- 15 A. No.
- 16 Q. Did the paramedic put you on a board
- 17 of some kind to transport you to the
- 18 hospital?
- 19 A. Yes. He put me on a board and
- 20 strapped me down.
- 21 Q. Were you taken to St. Vincent's
- 22 Hospital?
- 23 A. In Staten Island.
- 24 Q. Is that where you were taken?
- 25 A. I think, yeah.

- 1 Moore
- 2 Q. Were you admitted to the hospital?
- 3 A. I guess, yeah.
- 4 Q. Well, by that I mean you weren't
- 5 treated and released, correct?
- 6 A. Oh, yeah.
- 7 Q. Were you first seen in the emergency
- 8 room?
- 9 A. I was told I was seen in the trauma
- 10 unit.
- 11 Q. Were you conscious when you were
- 12 placed in the ambulance?
- 13 A. Yes.
- 14 Q. Were you conscious when you arrived at
- 15 the hospital?
- 16 A. Yes.
- 17 Q. When you say you were told that you
- 18 were first seen in the trauma center, who
- 19 told you?
- 20 A. Mike.
- 21 Q. Did Mike accompany you to the
- 22 hospital?
- 23 A. Yes. Yes, he did.
- Q. Were x-rays taken in the trauma
- 25 center?

- 1 Moore
- 2 A. I guess. I'm not sure.
- 3 Q. You don't remember?
- 4 A. No.
- 5 Q. Was an MRI performed in the trauma
- 6 center?
- 7 A. I'm not sure what tests they did.
- 8 Q. You underwent MRIs later on in your
- 9 treatment as a result of the injuries you
- 10 sustained in this accident, correct?
- 11 A. Yes.
- 12 Q. You understand that when you have an
- 13 MRI, you are lying down and you get placed
- 14 into a tube of some kind?
- 15 A. Yeah.
- 16 Q. Did that happen while you were at the
- 17 trauma center?
- 18 A. I don't remember if it happened that
- 19 day to tell you the truth.
- 20 Q. Did any doctor or other health care
- 21 provider tell you any of the injuries that
- 22 you had sustained when you were in the trauma
- 23 center?
- 24 A. The one thing they focused on is that
- 25 they had to operate on my arm that day.

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- 1 Moore
- 2 Q. Did a physician tell you in words or
- 3 substance that your elbow had been broken?
- 4 A. Well, he said a piece of my elbow had
- 5 broken off and it went down into my wrist.
- 6 MR. MC DERMOTT: Which arm, sir?
- 7 THE WITNESS: This one.
- 8 Q. The right?
- 9 A. My right elbow. Sorry.
- 10 Q. Was the surgery performed at the
- 11 hospital that day?
- 12 A. Yes.
- MR. KOVNER: Off the record.
- 14 (Discussion held off the
- record.)
- 16 Q. Can you tell us the name of the doctor
- who performed the surgery?
- 18 A. I don't remember.
- 19 Q. When you came out of recovery after
- 20 the surgery, was your right arm in a cast of
- 21 some kind?
- 22 A. Yes.
- 23 Q. From where to where did the cast
- 24 extend?
- 25 A. From my wrist up to my shoulder.

- 1 Moore
- Q. Was it a hard cast or soft cast?
- 3 A. Hard cast.
- 4 Q. Did you remain in the hospital for a
- 5 period of time?
- 6 A. Yeah. I think four or five days.
- 7 Q. When you were discharged from the
- 8 hospital, did you go home?
- 9 A. Yes.
- 10 Q. How did you get home?
- 11 A. My girlfriend came and got me.
- 12 Q. What is her name?
- 13 A. Susan Catapano.
- 14 Q. Are you now married to her?
- 15 A. No.
- 16 Q. Are you engaged to her?
- 17 A. Yeah.
- 18 Q. When did you become engaged?
- 19 A. We didn't have like any official
- 20 ceremony or anything.
- 21 Q. Did you give her an engagement ring?
- 22 A. No.
- 23 Q. So, it was just --
- 24 A. Mutual agreement.
- 25 Q. At some point in time you and her

- 1 Moore
- 2 agreed to be engaged to be married at some
- 3 point?
- 4 A. Yes. She pretty much told me.
- 5 Q. Can you tell us approximately when you
- 6 and Ms. Catapano reached this understanding?
- 7 MR. DIAMOND: Just generally.
- 8 A. A few years ago.
- 9 Q. You had been married and divorced
- 10 before you met Ms. Catapano?
- 11 A. Years ago.
- 12 Q. In what year were you married?
- 13 A. 1979.
- 14 Q. In what year were you divorced?
- 15 A. 1985.
- 16 Q. You had one child with your first
- 17 wife?
- 18 A. Yes.
- 19 Q. What is that child's name and age?
- 20 A. John, and he's 27.
- 21 Q. Was he living with you at the time of
- 22 the accident?
- 23 A. No.
- 24 Q. Ms. Catapano had been previously
- 25 married and divorced?

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2 Α.

Yes.

- 3 Q. When was she divorced?
- I'm not sure. 4 Α.
- 5 Q. Can you tell us the year?
- 6 That she was divorced? Α.
- 7 Q. Yes.

- 8 I really don't know. She was divorced Α.
- 9 when we --
- 10 When you first met her? Q.
- 11 Α. Yes.
- Could you tell us approximately when 12
- 13 you first met her?
- 14 A. This is complicated now.
- When did you first enter into a 15 Q.
- 16 relationship with her?
- 17 Α. 1998.
- Did she have children that lived with 18 0.
- 19 her?
- 20 Three children. Α.
- 21 Q. What are their names and ages?
- Jessica -- their ages now or at the 22
- 23 time of the accident?
- 24 Q. Now.
- Jessica is 22, Jimmy is 20, Catarina 25 Α.

- 1 Moore
- 2 is 16.
- 3 Q. Were you and Ms. Catapano living
- 4 together in September of 2004?
- 5 A. Yes.
- 6 Q. When for the first time had you begun
- 7 living together?
- 8 A. I would say 2000.
- 9 Q. In September of 2004 were any of Ms.
- 10 Catapano's children living with you and she?
- 11 A. Yes.
- 12 Q. Which ones?
- 13 A. All three.
- 14 Q. All three?
- 15 A. Yes.
- 16 Q. Did Ms. Catapano receive child support
- 17 from her ex-husband?
- 18 A. I'm not sure. I think she was suppose
- 19 to.
- 20 Q. Did she receive alimony from her
- 21 ex-husband?
- 22 A. I don't think so.
- 23 Q. When you say she was suppose to, was
- 24 she involved in a legal proceeding to try to
- 25 enforce an award of child support with her

46 1 Moore ex-husband? 2 3 MR. DIAMOND: I'll object to the 4 form of the question, and instruct him 5 not to answer. There is no loss of services claim. If you want to delve 6 7 into questions with respect to his 8 support of the children, that's fine. 9 0. Prior to the accident were you 10 providing any financial support to Ms. 11 Catapano's children? 12 Well, we both kicked in money. 13 Q. Was Ms. Catapano employed on September 14 16th of 2004? A. 15 Yeah. 16 What kind of work did she do? Ο. 17 She was a secretary for a surgical 18 supply company. 19 Can you tell me approximately what her 0. 20 income was? 21 To be real specific I really don't 22 know because she handled all the paperwork. 23 0. Do any of her children still live with

the two of you today?

Just Catarina.

24

25

Α.

1 Moore

- 2 Q. When did Jessica move out?
- 3 A. About nine months ago.
- 4 Q. When did Jimmy move out?
- 5 A. About six weeks ago.
- 6 O. Did Jessica indicate in words or
- 7 substance that she was moving out in part
- 8 because of the injuries that you sustained in
- 9 the accident and the effect on your life?
- 10 A. No.
- 11 Q. Did Jimmy say that in words or
- 12 substance?
- 13 A. No.
- 14 Q. Is Catarina in school?
- 15 A. Yes.
- 16 Q. She goes to high school?
- 17 A. Junior.
- 18 Q. What school?
- 19 A. Middletown North.
- 20 Q. To your knowledge does Ms. Catapano's
- 21 ex-husband have an obligation under some type
- 22 of divorce decree to provide for the college
- 23 education of Catarina?
- 24 A. I don't know.
- 25 Q. At anytime prior to September 16th of

1 Moore

- 2 2004 did you and Ms. Catapano discuss whether
- 3 you would contribute to the college education
- 4 of Catarina?
- 5 A. We were all in it together.
- 6 O. Is Jessica in school?
- 7 A. No. She graduated high school.
- 8 Q. Does she work?
- 9 A. Yes.
- 10 Q. Is Jimmy in school?
- 11 A. No.
- 12 Q. He graduated high school?
- 13 A. Yes.
- 14 Q. Does he work?
- 15 A. Yes.
- 16 Q. Did either Jessica or Jimmy attend
- 17 college?
- 18 A. No.
- 19 Q. Did they want to attend college, but
- 20 decided not to because they couldn't afford
- 21 to or they just never wanted to?
- 22 A. I think Jimmy wanted to attend
- 23 college, but really can't afford it.
- 24 Q. Prior to your accident had you
- 25 discussed with Ms. Catapano whether you would

1 Moore contribute to Jimmy going to college? 2 3 MR. DIAMOND: Note my objection. Didn't you just ask that question 4 before? 5 6 MR. KOVNER: No, I did not. 7 MR. DIAMOND: In substance when 8 he said they were all in it together. 9 MR. KOVNER: This is a precise 10 question based on what he just 11 testified to. 12 We do everything together as a family. Α. 13 Did you believe before your accident Q. 14 that you were going to help pay to send Jimmy 15 to college? 16 I wasn't sure if he was going to go Α. 17 then. He was still in high school. 18 Did you discuss with Susan that you 0. 19 would contribute to sending Jimmy to college 20 if he wanted to go? 21 Α. Sure. 22 Is it your position that Jimmy decided 23 not to go because of the injuries that you 24 sustained in this accident and the effect 25 it's had on your income?

- 1 Moore
- 2 A. That I don't know.
- 3 Q. After you were discharged from St.
- 4 Vincent's Hospital, when was the next time
- 5 that you sought any treatment for the
- 6 injuries you sustained in this accident?
- 7 A. The very next month.
- 8 Q. Who did you see at that time?
- 9 A. Dr. Touliopoulos. He's an orthopedic
- 10 surgeon.
- 11 Q. Had you ever seen Dr. Touliopoulos
- 12 before the first visit?
- 13 A. No.
- 14 Q. I know you're anxious to tell your
- 15 story. I'll give you an opportunity to tell
- 16 us anything you want to, but please wait
- 17 until I finish asking the question before you
- 18 answer even though you think you may know
- 19 what my question is because it makes it hard
- 20 for the reporter to take us both down when
- 21 we're speaking at the same time.
- Had you ever seen Dr. Touliopoulos
- 23 prior to September 16th of 2004?
- 24 A. No.
- 25 Q. Had you retained the law firm of Sacks

- 1 Moore
- 2 & Sacks prior to your first visit with Dr.
- 3 Touliopoulos?
- 4 A. I think I did.
- 5 Q. Did someone at the firm of Sacks &
- 6 Sacks refer you to Dr. Touliopoulos?
- 7 A. No. A friend of mine who was an
- 8 ironworker who sees Dr. Touliopoulos
- 9 recommended him.
- 10 Q. Which friend was this?
- 11 A. Bobby -- you have to understand I
- 12 don't work with these guys everyday -- Bauers
- 13 (phonetic).
- 14 Q. Had Bobby Bauers been treated by Dr.
- 15 Touliopoulos as a result of an injury
- 16 sustained on the job?
- 17 A. Yes.
- 18 Q. Was Bobby Bauers ever represented by
- 19 Sacks & Sacks?
- MR. DIAMOND: Note my objection
- 21 to the form of the question.
- 22 A. I'm not sure.
- MR. KOVNER: Off the record.
- 24 (Discussion held off the
- 25 record.)

- 1 Moore
- 2 Q. Where is Dr. Touliopoulos' office
- 3 located?
- 4 A. 12th Street and Seventh Avenue.
- 5 Q. In what borough?
- 6 A. Manhattan.
- 7 Q. At the time you first saw Dr.
- 8 Touliopoulos you were still living in Port
- 9 Monmouth, New Jersey, correct?
- 10 A. Yes.
- 11 Q. You're still living there today?
- 12 A. Yes.
- 13 Q. Approximately how long does it take
- 14 for you to get from your home in Port
- 15 Monmouth to Dr. Touliopoulos?
- 16 A. An hour.
- 17 Q. The first time that you first saw Dr.
- 18 Touliopoulos approximately one month after
- 19 being discharged from St. Vincent's what were
- 20 your complaints?
- 21 A. Pain-wise?
- 22 Q. Yes.
- 23 A. My arm, my shoulder, my neck, my back,
- 24 my knees, my right ankle, my hands, my head.
- 25 That's pretty much it.

- 1 Moore
- 2 Q. Did you have pain in one arm or both
- 3 arms?
- 4 A. I had sporadic pain in my left
- 5 shoulder, but it was nothing like the one in
- 6 my right shoulder.
- 7 Q. I was asking about your arms. We'll
- 8 get to your shoulders in a moment.
- 9 A. Primarily my right arm.
- 10 Q. Did you have constant pain in your
- 11 right arm?
- 12 A. I have it everyday.
- 13 Q. Still today?
- 14 A. Yeah.
- 15 Q. Do you take any prescription
- 16 medication for the pain in your right arm
- 17 today?
- 18 A. Ibuprofen.
- 19 Q. That's over-the-counter?
- 20 A. No. That's a prescription.
- 21 Q. Who prescribed it for you?
- 22 A. Dr. Touliopoulos.
- 23 Q. I take it from your prior testimony
- 24 earlier this morning that you have not taken
- any today; is that correct?

- 1 Moore
- 2 A. Right.
- 3 Q. Did you take any medication for pain
- 4 yesterday?
- 5 A. No. The day before I did.
- 6 O. Two days ago?
- 7 A. Yes.
- 8 Q. How many did you take at that time?
- 9 A. I took two over the course of a day.
- 10 O. When was the last time before that
- 11 that you had taken any pain medication?
- 12 A. Pretty much everyday.
- 13 Q. Now, on your first visit to Dr.
- 14 Touliopoulos can you tell us in more detail
- 15 when you say you had pain in your shoulder,
- 16 right, left, both?
- 17 A. I had pain in my right shoulder and
- 18 right arm.
- 19 Q. Did you still have a cast on when you
- 20 first saw Dr. Touliopoulos?
- 21 A. Yes.
- 22 Q. Did he take the cast off on your first
- 23 visit?
- 24 A. No.
- 25 Q. Did he take any x-rays?

- 1 Moore
- 2 A. Not then. He scheduled me for x-rays.
- 3 Q. On your first visit to Dr.
- 4 Touliopoulos can you describe the pain you
- 5 had in your neck?
- 6 A. It was like a throbbing pain right
- 7 here on the right side of my neck.
- 8 Q. Was that constant or periodic?
- 9 A. I still have it.
- 10 Q. You still have neck pain today?
- 11 A. Yeah.
- 12 Q. Describe the pain in your back on your
- 13 first visit to Dr. Touliopoulos.
- 14 A. Well, it's in the middle of my back
- 15 and then the right lower part of my back like
- 16 going into my hip.
- 17 Q. You said you had pain in both knees on
- 18 your first visit.
- 19 A. Yes. I still have pain in my knees.
- 20 Q. Both knees?
- 21 A. Yes.
- 22 Q. Do you have pain in your knees now?
- 23 A. This morning I had pain in my left
- 24 knee, which is ironic because it's usually in
- 25 my right knee.

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1		Moore
2	Q.,	Did you have pain in your knee
3	yeste	rday?
4	A.	Yes.
5	Q.	Do you ever take medication for the
6	pain	in your knees?
7	Α.	I just take the Ibuprofen.
8	Q.	When you take the Ibuprofen, does that
. 9	help :	reduce the pain in your knees?
10	A.	Not really.
11	Q.	Does it help the pain in your neck?
12	A.	Not really.
13	Q.	Does it help the pain in your arm?
14	A.	Not really.
15	Q.	Have you ever asked Dr. Touliopoulos
16	to pre	scribe a stronger medication for pain?
17	ve	MR. DIAMOND: Ever since he's
18		been treating with him?
19		MR. KOVNER: Yes.
20	A.	From the initial outset the first day?
21	Q.	After the cast was removed.
22		MR. DIAMOND: Note my objection.

Off the record.

record.)

(Discussion held off the

23

24

- 1 Moore
- Q. When you were in the hospital, you
- 3 were given medication for pain, correct?
- 4 A. Yes.
- 5 Q. What were you given?
- 6 A. Morphine, Percocet. Like I have a
- 7 headache right now. I don't know what it's
- 8 from, and it feels dead in the right side of
- 9 my face. I don't know if that's from my neck
- 10 or my head.
- 11 Q. When you were discharged from the
- 12 hospital, did you ever take morphine again
- 13 for the injuries that you sustained in this
- 14 accident?
- 15 A. No.
- 16 Q. After you were discharged from the
- 17 hospital, did you ever take Percocet again?
- 18 A. Yes.
- 19 Q. When you left the hospital, did you
- 20 have a prescription for Percocet?
- 21 A. Yes.
- 22 Q. Did you fill the prescription?
- 23 A. Yes.
- 24 Q. How many pills were in that
- 25 prescription?

- 1 Moore
- 2 A. I think 100.
- 3 Q. Did you take all 100 of those pills?
- 4 A. Yes.
- 5 Q. Did you at anytime thereafter get a
- 6 new prescription for Percocet?
- 7 A. Yes.
- 8 Q. How many prescriptions for Percocet in
- 9 total have you had?
- 10 A. I don't remember. It was a few.
- 11 Q. Do you presently have a prescription
- 12 for Percocet?
- 13 A. No.
- 14 Q. Have you had any prescriptions for
- 15 Percocet at anytime in 2006?
- 16 A. No.
- 17 Q. When was the last time in 2005 that
- 18 you took any Percocet as a result of the
- 19 injuries that you sustained in this accident?
- 20 A. Maybe in the spring.
- 21 Q. Did the Percocet eliminate the pain
- 22 that you had in various parts of your body?
- 23 A. Not really.
- 24 Q. Did it reduce the pain that you were
- 25 suffering from?

- 1 Moore
- 2 A. Somewhat.
- 3 Q. Did it ever reduce the pain
- 4 significantly?
- 5 A. No, not really.
- 6 Q. After the last time you took Percocet
- 7 in or about the spring of 2005, did you ever
- 8 obtain another prescription for pain
- 9 medication?
- 10 A. In 2005?
- 11 Q. At anytime after you had your last
- 12 Percocet in the spring of 2005, did you ever
- 13 get a prescription for any other pain
- 14 medication?
- 15 A. Vicodin.
- 16 Q. Who prescribed Vicodin?
- 17 A. Dr. Hausknecht.
- 18 Q. When for the first time did he
- 19 prescribe Vicodin for you?
- 20 A. I'm not sure.
- 21 Q. Do you presently have a prescription
- 22 for Vicodin?
- 23 A. No.
- 24 Q. Have you had a prescription for
- 25 Vicodin at anytime in 2006?

- 1 Moore
- 2 A. No.
- 9 Q. When was the last time in 2005 that
- 4 you took any Vicodin?
- 5 A. I would say in the summertime.
- 6 Q. Did the Vicodin reduce the pain that
- 7 you were dealing with?
- 8 A. No, not really.
- 9 Q. Have you ever consulted a pain
- 10 management specialist prior to today?
- 11 A. No.
- 12 Q. Do you have an appointment scheduled
- 13 with any pain management specialist?
- 14 A. No.
- 15 Q. On your first visit to Dr.
- 16 Touliopoulos did he take any x-rays?
- MR. DIAMOND: He testified he
- scheduled them.
- 19 A. He scheduled some, but not the first
- 20 visit.
- 21 Q. How many times in total have you seen
- 22 Dr. Touliopoulos?
- 23 A. It's got to be 20, 25 times.
- Q. When was the last time prior to today
- 25 that you've seen him?

- 1 Moore
- 2 A. I'd say July.
- 3 Q. Of '06?
- 4 A. Yes.
- 5 Q. Do you have any appointments scheduled
- 6 with him in the future?
- 7 A. Within the next couple of weeks I go
- 8 see him.
- 9 Q. Do you have an appointment?
- 10 A. A specific date?
- 11 Q. Yes.
- 12 A. No.
- 13 Q. How frequently do you see him now?
- 14 A. Once a month.
- 15 Q. On your last visit to Dr. Touliopoulos
- 16 in July of 2006 what were your complaints of
- 17 pain, if any?
- 18 A. My shoulder, my elbow, my knees, my
- 19 back.
- 20 Q. Anything else?
- 21 A. My neck.
- 22 Q. Anything else?
- 23 A. No. I don't complain about my head to
- 24 him. I complain to the other guy.
- 25 Q. When you last saw him in July, did you

- 1 Moore
- 2 have pain in one shoulder or both?
- 3 A. Just the right one pretty much.
- 4 Q. Did you have pain in your right elbow
- 5 or both?
- 6 A. My right elbow.
- 7 Q. Both knees?
- 8 A. Yeah.
- 9 Q. What part of your back?
- 10 A. The middle of my back and the lower
- 11 part on the right side. It kind of goes into
- 12 my hip over here.
- 13 Q. The pain radiates down to your hip?
- 14 A. Yes.
- 15 Q. Which hip?
- 16 A. My right hip.
- 17 Q. What part of your neck?
- 18 A. On the right side of my neck. It
- 19 feels like dead sometimes in there. I get
- 20 like a sharp pain and then it goes dead.
- 21 Q. Like numb?
- 22 A. Yes.
- 23 Q. How frequently does that happen?
- 24 A. A couple of times a week.
- 25 Q. Did Dr. Touliopoulos send you for

2 MRIs?

- 3 A. Well, I was approved by the State
- 4 Compensation for an MRI at a hearing, but
- 5 they still haven't sent the official approval
- 6 to my doctor to have the MRI.
- 7 Q. When was there a hearing with the
- 8 Compensation?
- 9 A. It had to be ten months ago.
- 10 Q. Are you receiving money from Workers'
- 11 Compensation?
- 12 A. Yes.
- 13 Q. How much are you receiving?
- 14 A. 400 a week.
- 15 Q. That's for lost wages or something
- 16 else?
- 17 A. I don't know what it's considered.
- 18 Q. Did you have an MRI at Diagnostic
- 19 Radiology Associates on West 17th Street in
- 20 2004?
- 21 A. I'm not sure. I've had some x-rays
- 22 done there.
- 23 Q. So, you do recall going to Diagnostic
- 24 Radiology Associates' office on West 17th
- 25 Street in New York City?

- 1 Moore
- 2 A. Yes.
- 3 Q. Were you referred there by Dr.
- 4 Touliopoulos?
- 5 A. Yes.
- 6 Q. Did you go back for any MRIs at that
- 7 same facility in January of 2005?
- 8 A. I don't know if I ever got an MRI
- 9 there. I got a couple of MRIs by where I
- 10 live.
- 11 MR. DIAMOND: I believe only
- 12 x-rays were taken at that facility. I
- believe. I could be wrong.
- 14 Q. Can you identify where near your home
- 15 you had MRIs?
- 16 A. I think it's Middletown Imaging.
- MR. KOVNER: Off the record.
- 18 (Discussion held off the
- 19 record.)
- 20 Q. Middletown Imaging?
- 21 A. Yes.
- 22 Q. How many MRIs have you had at that
- 23 facility?
- 24 A. A couple that I recall.
- 25 Q. Were you referred to Middletown

- 1 Moore
- 2 Imaging by Dr. Touliopoulos or someone else?
- 3 A. Yes.
- 4 Q. Did someone at Middletown Imaging tell
- 5 you the results of the MRI or did Dr.
- 6 Touliopoulos tell you?
- 7 A. I don't even know if I know the
- 8 results.
- 9 Q. Can you tell us when you had the MRIs
- 10 at the Middletown Imaging facility?
- 11 A. Vaguely. Just within the last couple
- 12 of years.
- 13 Q. Your accident was in 2004. So,
- 14 everything was in the last couple of years.
- Were the MRIs taken in 2006 at this
- .16 location?
- 17 A. No. I don't think so.
- 18 Q. Sometime in 2005?
- 19 A. Yes.
- MR. KOVNER: For the record, I
- 21 don't think we ever received
- authorizations for Middletown Imaging.
- 23 I request them.
- 24 REQUEST NOTED:
- 25 Q. On your last visit to Dr. Touliopoulos

- 1 Moore
- 2 in July of 2006 what, if anything, did he
- 3 tell you about your right shoulder?
- 4 A. That I needed an operation.
- 5 Q. Did Dr. Touliopoulos tell you that he
- 6 would do the surgery?
- 7 A. Yeah.
- 8 Q. Is it scheduled?
- 9 A. No. We need approval from the State
- 10 Compensation. Even though at the hearing I
- 11 was approved, they still haven't formally
- 12 given approval.
- 13 Q. At your last visit in July of 2006
- 14 what, if anything, did Dr. Touliopoulos tell
- 15 you about your right elbow?
- 16 A. That he wanted to MRI it again.
- 17 Q. Did he indicate that he was concerned
- 18 about a particular condition?
- 19 A. Not that I recall.
- 20 Q. Do you have an appointment for an MRI
- 21 of your right elbow?
- 22 A. That's another thing. It was approved
- 23 by the State Compensation, but it's still not
- 24 formally approved.
- 25 Q. What, if anything, did Dr.

- 1 Moore
- 2 Touliopoulos tell you about your knees in
- 3 July of 2006?
- 4 A. That he wanted to MRI them to see why
- 5 I was still having pain in them.
- 6 Q. I take it you have not yet had an MRI
- 7 of your knees?
- 8 A. No.
- 9 Q. Is it scheduled?
- 10 A. Not that I know of.
- 11 Q. Was that also approved at the Workers'
- 12 Compensation hearing?
- 13 A. Yes. I went in front of a judge at
- 14 the Compensation hearing, and they approved
- 15 four or five different things, but nothing
- 16 has formally been given to me.
- MR. KOVNER: Off the record.
- 18 (Discussion held off the
- record.)
- 20 Q. On your last visit to Dr. Touliopoulos
- 21 what, if anything, did he tell you about your
- 22 back?
- 23 A. He wanted to give me some epidural
- 24 shots in my lower back.
- 25 Q. Did you ever receive epidurals?

- 1 Moore
- 2 A. No. I'm a little hesitant.
- 3 Q. Why is that?
- 4 A. I know this is going to sound
- 5 contradictory to my life, but I really don't
- 6 want somebody sticking needles in my back.
- 7 Q. Have you discussed that with your
- 8 fiancee?
- 9 MR. DIAMOND: Note my objection.
- 10 A. I think she's tired of hearing me
- 11 complain.
- 12 Q. So, I take it at present you don't
- 13 have any appointments scheduled for an
- 14 epidural injection?
- 15 A. No. We discuss it when I go to visit
- 16 Dr. Touliopoulos, but I usually kind of try
- 17 to round on that.
- 18 Q. Did Dr. Touliopoulos tell you in words
- 19 or substance that the epidural injections
- 20 might reduce your pain?
- 21 A. That's not what I get from him.
- 22 Q. What did you get from him?
- MR. DIAMOND: Note my objection.
- 24 A. We're kind of reaching for anything
- 25 that might help.

2 Q. On your last visit to Dr. Touliopoulos

- 3 what, if anything, did he tell you about your
- 4 neck?
- 5 A. That he wanted to take an MRI of that
- 6 as well.
- 7 Q. I take it that has not yet been
- 8 scheduled?
- 9 A. No.
- 10 Q. Was an MRI of your neck also approved
- 11 at the Compensation hearing? Do you know?
- 12 A. I think it was. Everything that I
- 13 applied for the judge okayed.
- 14 Q. When for the first time did you see
- 15 Dr. Hausknecht?
- 16 A. About a month and a half after I got
- 17 out of the hospital.
- 18 Q. Prior to September 16th of 2004 had
- 19 you ever seen Dr. Hausknecht?
- 20 A. No.
- 21 Q. Is his office located on East 37th
- 22 Street in New York City?
- 23 A. Yes.
- 24 Q. Who referred you to Dr. Hausknecht?
- 25 A. You know, I don't even remember.

7	
1	Moore
	MOOTE

- 2 Q. Were you referred to him by your
- 3 attorney?
- 4 A. I don't even remember to tell you the
- 5 truth. I just heard that he was really good.
- 6 Q. Who did you hear that from?
- 7 A. I want to say somebody that got hurt
- 8 in my business, but I'm not sure.
- 9 Q. You saw him approximately one month
- 10 after you were discharged from the hospital?
- MR. DIAMOND: Month and a half.
- 12 A. Month and a half.
- 13 Q. What were your complaints at that
- 14 time?
- 15 A. I think it was the first or second
- 16 visit that my girlfriend came with me,
- 17 because she was getting irritated that I was
- 18 having real problems with my short-term
- 19 memory. I would keep asking her the same
- 20 things, and she said that we had already
- 21 discussed it and I had no recollection of
- 22 discussing it, and I would get severe
- 23 headaches, which I still get. I get them
- 24 behind my eye and behind my right ear.
- 25 Q. Behind your right eye and behind your

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- 2 right ear?
- 3 A. Yes.
- 4 Q. How frequently do you get the severe
- 5 headaches behind your right eye and right
- 6 ear?

- 7 A. I would say everyday, especially when
- 8 I'm doing homework with my son.
- 9 Q. Did Dr. Hausknecht perform any tests
- 10 on your first visit?
- 11 A. He did several tests. I'm not sure
- 12 what they're called.
- 13 Q. Did he tell you the results of the
- 14 tests?
- 15 A. I think he did, but I don't remember.
- 16 I don't mean to sound vague, but I don't.
- 17 Q. As you sit here today you're unable to
- 18 tell us in substance what Dr. Hausknecht told
- 19 you the results of the tests were?
- 20 A. Yeah. I couldn't tell you in
- 21 substance.
- 22 Q. How many times in total have you seen
- 23 Dr. Hausknecht?
- 24 A. It's got to be 15 or 20.
- 25 Q. When was the last time prior to today

- 2 that you saw Dr. Hausknecht?
- 3 A. July.
- 4 Q. Before that, when was the last visit?

- 5 A. June.
- 6 Q. Do you see Dr. Hausknecht every month?
- 7 A. Yes.
- 8 Q. Do you try to see Dr. Hausknecht and
- 9 Dr. Touliopoulos on the same trip from your
- 10 home into the City?
- 11 A. That would make sense, but I haven't
- 12 done it like that.
- 13 Q. Do you have an appointment scheduled
- 14 with Dr. Hausknecht?
- 15 A. No.
- 16 Q. On your last visit to Dr. Hausknecht
- in July of '06 what complaints, if any, did
- 18 you have with respect to the injuries that
- 19 you've sustained in this accident?
- 20 A. That I was still getting headaches and
- 21 sometimes it affects my sleeping, that I get
- 22 really nervous.
- 23 Q. Anything else?
- 24 A. That I have been getting forgetful.
- 25 Q. Is it fair to say that the complaints

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	Moore	•	

- 2 that you've just listed for us have
- 3 essentially been the same complaints that
- 4 you've made to Dr. Hausknecht on each of your
- 5 15 to 20 visits to him?
- 6 A. Sometimes the headaches are like more
- 7 intense than other times.
- 8 Q. So, there would be times during these
- 9 15 to 20 visits when your complaints about
- 10 the headaches would be something that you
- 11 emphasized in your discussions with Dr.
- 12 Hausknecht, correct?
- 13 A. Yeah.

- 14 Q. But is it fair to say that you've
- 15 complained about the headaches on each of
- 16 your visits to him?
- 17 A. Pretty much.
- 18 Q. Have you also complained about getting
- 19 forgetful on each of your visits to him?
- 20 A. Yes.
- 21 Q. Have you complained about the effect
- the accident has had on your sleeping on each
- 23 of your visits to him?
- 24 A. Yes.
- 25 Q. Have you complained about getting

2 really nervous on each of your visits to him?

- 3 A. Probably not every visit.
- 4 Q. On your last visit to Dr. Hausknecht
- 5 in July of 2006 what, if anything, did he
- 6 tell you about the headaches?
- 7 A. That it was a result of hitting my
- 8 head, being unconscious.
- 9 Q. Did he tell you that there was any
- 10 treatment that he could do that would help
- 11 alleviate the headaches?
- 12 A. I don't remember.
- 13 Q. What, if anything, did Dr. Hausknecht
- 14 tell you about your getting forgetful?
- 15 A. That it could be from head trauma.
- 16 Q. Did he tell you that it could be from
- 17 something else as well?
- 18 A. No. I think he just pretty much stays
- 19 for what I see him for, the head trauma.
- 20 Q. Over the course of your 15 to 20
- 21 visits to Dr. Hausknecht from '04 when you
- 22 first saw him a month and a half after the
- 23 discharge from St. Vincent's right up through
- 24 to the present has your short-term memory
- 25 been about the same, gotten worse or gotten

2 better?

- 3 A. I think you have to ask somebody that
- 4 I deal with everyday, because I'm not sure.
- 5 I know it irritates my girlfriend.
- 6 Q. Is the forgetfulness limited to
- 7 short-term memory or does it also apply to
- 8 long-term memory?
- 9 A. I don't know.
- 10 Q. Did Dr. Hausknecht ever prescribe any
- 11 medication for the headaches other than the
- 12 Vicodin?
- 13 A. No.
- 14 Q. Did Dr. Hausknecht ever prescribe any
- 15 treatment for the forgetfulness or the
- 16 headaches?
- 17 A. Not that I remember.
- 18 Q. Did Dr. Hausknecht perform any tests
- 19 on any of your visits in 2006?
- 20 A. No, not this year.
- 21 Q. Did Dr. Hausknecht perform any tests
- 22 on any of your visits in 2005?
- 23 A. Yes.
- Q. When was the last time in 2005 that he
- 25 performed any tests?

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	Moore

- 2 A. I would say about over a year ago.
- 3 Q. Sometime in 2005 before September?
- 4 A. Yeah.
- 5 Q. Can you describe the test that he did
- 6 at that time?
- 7 A. He hooked up like these wires to my
- 8 head with some kind of gel. I don't
- 9 remember. I'm not trying to be vague, but I
- 10 don't really remember how the test
- 11 transpired.
- 12 Q. You don't recall what, if anything, he
- 13 told you about the results; is that correct?
- 14 A. No.
- 15 Q. Have you been treated by anyone other
- 16 than at St. Vincent's, Dr. Touliopoulos and
- 17 Dr. Hausknecht as a result of the injuries
- 18 that you sustained in this accident?
- 19 A. No.
- 20 MR. DIAMOND: And the places for
- 21 testing.
- MR. KOVNER: Right.
- 23 (Brief recess taken.)
- 24 Q. Have you ever gone for physical
- 25 therapy as a result of the injuries that you

2 sustained?

- 3 A. Yes.
- 4 Q. When for the first time did you go for
- 5 physical therapy?
- 6 A. About three weeks after the operation.
- 7 Q. Where did you go?
- 8 A. Pro-Care.
- 9 Q. Where is Pro-Care located?
- 10 A. Holmdel, New Jersey?
- 11 Q. Had you been to Pro-Care at anytime
- 12 prior to September 16th of 2004?
- 13 A. No.
- 14 Q. How frequently did you go to Pro-Care?
- 15 A. In the beginning like twice-a week.
- 16 Q. For how long approximately did you go
- 17 twice a week?
- 18 A. A few months.
- 19 Q. After a few months, did you continue
- 20 to go there but less frequently?
- 21 A. I stopped after awhile.
- 22 Q. Can you tell us approximately when you
- 23 stopped?
- 24 A. After about three or four months, I
- 25 think.

- 1 Moore
- 2 Q. At anytime after you stopped going for
- 3 physical therapy at Pro-Care did you get
- 4 physical therapy at any other place?
- 5 A. I went to a chiropractor.
- 6 Q. Who's the chiropractor?
- 7 A. Dr. Sanford.
- 8 Q. What's the complete name?
- 9 A. I think Richard Sanford.
- 10 Q. Where is Dr. Richard Sanford located?
- 11 A. Middletown, New Jersey.
- 12 Q. When did you see him for the first
- 13 time?
- 14 A. Maybe three or four months after the
- 15 accident.
- 16 Q. When did you start in with the
- 17 chiropractor, right after you stopped with
- 18 the physical therapy?
- 19 A. Yes. I asked my doctor if it would be
- 20 okay.
- 21 Q. Who did you ask, Dr. Touliopoulos?
- 22 A. Yes.
- 23 Q. What did he say?
- 24 A. He said yeah.
- 25 Q. How frequently did you see the

Moore Moore

2 chiropractor?

- 3 A. Twice a week.
- 4 Q. When was the last time you saw the
- 5 chiropractor?
- 6 A. Maybe a year ago.
- 7 Q. Do you have any appointments scheduled
- 8 presently with a physical therapist or
- 9 chiropractor?
- 10 A. No. I was going to though because he
- 11 was helping to alleviate some of the pain in
- 12 my back.
- 13 Q. The chiropractor was?
- 14 A. Yes.
- 15 Q. Did you get any relief from the
- 16 physical therapy?
- 17 A. Yeah, it was helping.
- 18 Q. Recently have you been looking around
- 19 for a new chiropractor to go to?
- 20 A. No. I'm thinking about going back to
- 21 him.
- 22 Q. Going back to Dr. Sanford?
- 23 At anytime after your accident of
- 24 September 16th of 2004 were you taking Paxil?
- 25 A. After the accident?

- 1 Moore
- 2 Q. Yes.
- 3 A. I was taking it for about a year.
- 4 Q. Were you ever taking Paxil prior to
- 5 the accident?
- 6 A. Yes.
- 7 Q. When for the first time did you take
- 8 Paxil before the accident?
- 9 A. Maybe a year before.
- 10 Q. Who prescribed the Paxil?
- 11 A. Dr. Gornish.
- 12 Q. What condition did you complain to her
- 13 about that led her to prescribe Paxil?
- 14 A. Anxiety. That's about it.
- 15 Q. Were you having trouble sleeping?
- 16 A. A little bit.
- 17 Q. How frequently did you have trouble
- 18 sleeping prior to the accident?
- 19 A. Not too often.
- 20 Q. Did you ever take Ambien prior to the
- 21 accident of September 16th of 2004?
- 22 A. Yes.
- 23 Q. When for the first time prior to the
- 24 accident did you take Ambien?
- 25 A. I'm not sure.

- 1 Moore
- 2 Q. Who prescribed Ambien before the
- 3 accident?
- 4 A. Dr. Gornish.
- 5 Q. How frequently did you take Paxil
- 6 prior to the accident?
- 7 A. Daily.
- 8 Q. You took Paxil for approximately one
- 9 year after the accident?
- 10 A. Yes.
- 11 Q. How frequently?
- 12 A. Daily.
- 13 Q. When was the last time prior to today
- 14 that you took Paxil?
- 15 A. A little over a year ago.
- 16 Q. Do you presently have a prescription
- 17 for any other medication for anxiety?
- 18 A. Yes, Risperdal.
- 19 Q. Was that prescribed by Dr. Gornish?
- 20 A. No.
- 21 Q. By whom?
- 22 A. It was prescribed through this doctor,
- 23 through this psychologist that I started
- 24 seeing after the accident.
- 25 Q. What is the psychologist's name?

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1	Moore	_
2	A. Marie, and you know this sounds	
3	outrageous, but I can't even remember her	
4	last name.	
5	MR. KOVNER: Counsel, do you	
6	have that information?	
7	MR. DIAMOND: I don't, other	
. 8	than Marie.	
9	MR. KOVNER: I presume from your	
10	answer that we also don't have	
11	authorizations. So, I'll request	
12	those.	
13	MR. DIAMOND: It's a new	
14	development.	
15	REQUEST NOTED:	
16	Q. When approximately did the	
17	psychologist prescribe Risperdal?	
18	A. Two months ago.	
19	Q. Was that your last appointment with	
20	her or have you seen her since then?	
21	A. I have seen her like two or three	
22	weeks ago.	
23	Q. Do you have an appointment scheduled	
24		

I can walk in on her unannounced any

25

A.

8.

- 1 Moore
- Wednesday or Friday.
- 3 Q. Where is her office located?
- 4 A. In Jersey Shore Medical in Neptune.
- 5 Q. On your first visit to Marie what were
- 6 your complaints to her?
- 7 A. Everything. You know, being out of
- 8 work, not having enough money for bills.
- 9 Q. Anything else?
- 10 A. Just general stuff.
- 11 Q. Well, can you tell us with any kind of
- 12 specificity any other complaint that you made
- 13 to Marie besides being out of work and not
- 14 having enough money to pay bills?
- 15 A. Complaining about the kids being too
- 16 loud.
- 17 Q. Anything else?
- 18 A. That's about it.
- 19 Q. Have you filled the prescription for
- 20 Risperdal?
- 21 A. Yes.
- 22 Q. How frequently, if at all, do you take
- 23 Risperdal?
- 24 A. Twice a day.
- 25 Q. Did you take any today before you came

2 here?

- 3 A. No, I didn't.
- 4 Q. Did you take two yesterday?
- 5 A. Yes, two. I took them last night.
- 6 Q. What, if anything, did Marie tell you
- 7 about your condition?
- 8 A. It's like a work in progress. She
- 9 hasn't given me any definitive stuff yet.
- 10 Q. How frequently did you take Ambien
- 11 prior to the accident?
- 12 A. A couple of times a week.
- 13 Q. Did you continue to take Ambien from
- 14 time to time after the accident?
- 15 A. No. I don't take it anymore.
- 16 Q. Did you take it at anytime after the
- 17 accident?
- 18 A. Yes.
- 19 Q. When was the last time you took it?
- 20 A. A couple of weeks ago.
- 21 Q. Just before you stopped taking it a
- 22 couple of weeks ago how frequently did you
- 23 take the Ambien?
- 24 A. I wasn't taking it at all.
- 25 Q. Did you take Ambien at anytime in 2006

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- 2 before a couple of weeks ago?
- 3 A. No. I had stopped taking it for about
- 4 a year.
- 5 Q. When you took it a couple of weeks
- 6 ago, was that part of an old prescription
- 7 which you had filled earlier or did you get a
- 8 new prescription?
- 9 A. No. I went and asked for a new
- 10 prescription.
- 11 Q. From whom?
- 12 A. Dr. Gornish.
- 13 Q. As you sit here today do you have any
- 14 complaints of pain as a result of the
- 15 injuries that you sustained?
- 16 A. My arm, my right arm, my right
- 17 shoulder, my lower back on my right side, my
- 18 neck, my head, my left knee today, my right
- 19 knee yesterday.
- 20 Q. Anything else?
- 21 A. That's it.
- 22 Q. As a result of the injuries that you
- 23 sustained are there any activities which you
- 24 used to engage in, but which you're no longer
- 25 able to?

2 A. Sports, playing catch with my son. I

- 3 really got into weightlifting when I got
- 4 straight 20 years ago. I haven't been really
- 5 able to do that anymore.
- 6 Q. Anything else?
- 7 A. Ironworking, which is all I really
- 8 know how to do.
- 9 Q. I'm not talking for the moment about
- 10 being able to work, but rather any non-work
- 11 activities.
- 12 Are there any other non-work
- 13 activities which you used to engage in, but
- 14 claim that you can no longer do as a result
- of the injuries that you sustained?
- 16 A. Wrestling around on the floor with the
- 17 kids. You know?
- 18 Q. Anything else?
- 19 A. Yard work. We like to plant flowers
- and stuff.
- 21 Q. Anything else?
- 22 A. Swimming.
- 23 Q. Anything else?
- 24 A. No.
- 25 Q. Did you play on any team sports in

- 2 high school?
- 3 A. Yeah.

- 4 Q. What sports did you play?
- 5 A. I played baseball, basketball. I
- 6 played hockey. I was on the swimming team in
- 7 the Boys Club in Manhattan. I grew up in
- 8 Manhattan. I did some boxing.
- 9 Q. Did you ever hurt your knee playing
- 10 any sports in school?
- 11 A. No. I never had any serious injuries.
- 12 Q. In 2004 just before September 16th
- 13 what sports did you engage in that you no
- 14 longer can do?
- 15 A. Weightlifting, basketball, punch the
- 16 bag everyday, play baseball, football with my
- sons.
- 18 Q. Did you belong to a gym in September
- 19 of '04?
- 20 A. Yes.
- 21 Q. What's the name of the gym?
- 22 A. It's no longer there. It was called
- 23 the Study Hall Gym.
- 24 Q. Where was it located?
- 25 A. Keansburg, New Jersey.

- 1 Moore
- 2 Q. When did it go out of business?
- 3 A. About a year and a half ago.
- 4 Q. I take it you're not a member of a gym
- 5 today?
- 6 A. Well, I go to one for therapy reasons.
- 7 Q. What gym do you go to today?
- 8 A. Gold's.
- 9 Q. What's the address of the branch?
- 10 A. It's in Middletown, New Jersey, but
- 11 I'm not really like -- if showing up counts
- 12 as membership, I'm really not a member.
- 13 Q. How frequently do you go to Gold's?
- 14 A. Once every few weeks.
- 15 Q. What do you do when you're there?
- 16 A. Socialize.
- 17 Q. Do you ever try to lift weights?
- 18 A. I can't.
- 19 Q. Do you ever do push-ups, things like
- 20 that?
- 21 A. I can't even do one push-up anymore.
- 22 Q. Have you ever been able to do any
- 23 push-ups at anytime since the accident?
- 24 A. No, not since the accident. I used to
- 25 do 50 at a clip even when I was 49.

1	Moore
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- 2 Q. How frequently did you play basketball
- 3 prior to the accident?
- 4 A. Once a week.
- 5 Q. Have you ever tried since the
- 6 accident?
- 7 A. No. I'm right-handed. I can't shoot.
- 8 Q. How frequently did you play baseball
- 9 prior to the accident?
- 10 A. I hadn't played baseball in years.
- 11 Q. You used to just fool around with your
- 12 sons?
- 13 A. Yes. Play catch in the backyard. He
- 14 played on little league teams.
- 15 Q. Have you tried to do that since your
- 16 accident?
- 17 A. No. I can't throw overhand.
- 18 Q. How frequently did you use to do yard
- 19 work prior to the accident?
- 20 A. A couple of times a week.
- 21 Q. Have you been able to do it at all
- 22 since?
- 23 A. No. I'm pretty much useless.
- MR. KOVNER: Thank you, Mr.
- 25 Moore. I have no further questions.

- 1 Moore
- 2 I refer to my colleagues.
- 3 EXAMINATION BY
- 4 MR. MC DERMOTT:
- 5 Q. My name is Matt McDermott. I
- 6 represent Kel Tech Construction. I have a
- 7 few questions for you.
- 8 Have you ever heard of Kel Tech
- 9 Construction?
- 10 A. Is that with a C?
- 11 Q. With a K.
- 12 A. No.
- 13 Q. Sir, at the time of your accident were
- 14 you wearing a hard hat?
- 15 A. Yes.
- 16 Q. Who provided it to you?
- 17 A. I have my own.
- 18 Q. Could you describe for me the basic
- 19 layout of the area of the building where you
- 20 were when your accident happened? I
- 21 understand you were on a concrete deck and
- 22 there was an elevator shaft somewhere in the
- 23 vicinity, but to the best of your ability can
- 24 you give me a general description of the
- 25 layout of the area?

- 1 Moore
- 2 A. I really can't.
- 3 Q. Was it an open construction floor?
- 4 A. Yeah.
- 5 Q. Did it have a roof on it or was it
- 6 open to the air?
- 7 A. It was open to the air.
- 8 Q. The beam that you were working with at
- 9 the time you had your accident, was that beam
- 10 to serve as a vertical column on the deck or
- 11 was it to serve as a support for the next
- 12 level of the building or something else?
- 13 What was that beam going to be?
- 14 A. I think it was a support for the -- I
- 15 think other beams were going to come off of
- 16 it.
- 17 Q. The beam that you were working with
- 18 when your accident happened, was it to be
- 19 installed horizontally or vertically?
- 20 A. Horizontally.
- 21 Q. When it was installed horizontally,
- 22 was it going to be at the level of the
- 23 concrete deck that you were standing at?
- 24 A. No.
- 25 Q. Higher than that?

2 A. Higher than that.

- 3 Q. Was that to be the next horizontal
- 4 level of the building?
- 5 A. I would think so, yeah.
- 6 Q. The beam that you were working with,
- 7 was that going to be attached to other pieces
- 8 of steel or was it going to be set in a
- 9 pocket in a masonry wall or a combination of
- 10 that or something else?
- 11 A. I think maybe a combination.
- 12 Q. Was one end of it going to go into a
- 13 pocket in a masonry wall?
- 14 A. Possibly. I can't be specific.
- 15 Q. The opening to the elevator shaft at
- 16 the level where you were, what were the
- 17 dimensions of that opening?
- 18 A. Maybe three or four feet.
- 19 Q. Three or four feet wide?
- 20 A. Yes.
- 21 Q. How far up did the shaft extend beyond
- 22 the level that you were standing on? Was it
- 23 an entire open doorway or only a portion?
- 24 A. It was an open doorway, but it had
- 25 walls next to it.

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2,	Q. There were walls that extended all the
3	way up on both sides of the doorway?
4	A. Yes.
5	Q. Was there anything guarding or
6	protecting the open doorway to the elevator
7	shaft on the day of your accident?
8 .	A. No.
9	Q. Are you familiar with the name of a
10	gentleman named Robert Corridor or Corredon?
11	MR. DIAMOND: Spell that for me.
12	MR. MC DERMOTT:
13	C-O-R-R-E-D-O-N.
14	Q. I'll represent to you and your counsel
15	that that man is listed as a potential
16	witness to your accident according to this
17	accident report. He's from New Rochelle, and
18	his name is Robert Corredon or Corridor.
19	MR. DIAMOND: Note my objection
20	to some document that is not
21	identified in the record and we
22	haven't established that this witness
23	ever saw it and knows what it is, but
24	you have the question and he answered
25	it. He doesn't know.

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2	odst so we know what you're
3	referencing, which document are you
4	referring to? Is that the Skanska
5	report?
6	MR. MC DERMOTT: Yes.
7	Q. Sir, as a member of Local 40 at the
8	time of your accident what was your hourly
. 9	wage?
10	A. It's got to be \$50 an hour.
11	Q. Aside from the hourly wage, what other
12	benefits were you entitled to or did you
13	receive as a union ironworker?
14	A. Pension, hospitalization, medical,
15	dental, vacation.
16	Q. Is there an annuity?
17	A. Annuity.
18	Q. Anything else that you can think of as
19	you sit here right now?
20	A. No.
21	Q. Each of those benefits that were
22	included as part of your compensation, did
23	the employer make contributions to each of
24	those categories per hour?
25	A. Yes.

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- 2 Q. Do you know what the dollar figures
- 3 per hour were for each of those things that
- 4 you just listed?
- 5 A. I know that I should, but I don't.
- 6 MR. DIAMOND: Off the record.
- 7 (Discussion held off the
- 8 record.)
- 9 A. And the topping out fund.
- 10 Q. Sir, have you ever heard of something
- 11 called a forced furlough program?
- 12 A. No.
- 13 Q. In the ten years before the accident
- 14 happened was there ever an occasion where the
- 15 union indicated that we're going to have to
- 16 lay you off for a period of time to give some
- 17 other union member an opportunity to work?
- 18 A. No.
- 19 Q. In the five years before your accident
- 20 happened did the union provide you with a
- 21 work opportunity if you wanted one? Did you
- 22 work full-time?
- 23 A. If it was available, yeah.
- 24 Q. Were there any periods when there was
- 25 no work for you from the union hall in the

- 2 five years prior to the accident?
- 3 A. Sometimes.
- 4 Q. What was the longest period that there

- 5 was no work for you?
- 6 A. A couple of weeks.
- 7 Q. Were there periods each year where
- 8 there was no work or was it less frequent
- 9 than yearly that there would be periods of no
- 10 work for you?
- 11 A. It was less frequent as I became more
- 12 established.
- 13 Q. Is there an attorney who is
- 14 representing you in your Workers'
- 15 Compensation claim?
- 16 A. I think so.
- 17 Q. Is it someone at Sacks & Sacks or is
- 18 it a different law firm?
- 19 A. No. I think it's Pulsky & -- I'm not
- 20 sure of the other member of the firm.
- 21 Q. Aside from the \$400 a week in
- 22 indemnity benefits that you receive from the
- 23 State Insurance Fund, your Workers'
- 24 Compensation benefits, do you have any other
- 25 source of income right now?

- 1 Moore
- 2 A. No.
- 3 Q. Do you receive any benefits from the
- 4 union?
- 5 A. The first six months I received \$150 a
- 6 week. Then after six months that ends.
- 7 Q. Have you applied for disability
- 8 benefits from the Social Security
- 9 Administration?
- 10 A. Yes.
- 11 Q. Did you receive a response to your
- 12 application?
- 13 A. I was turned down once.
- 14 Q. Did an attorney assist you in the
- 15 preparation of your application?
- 16 A. Yes, Binder & Binder.
- 17 Q. When were you denied benefits from
- 18 Social Security?
- 19 A. About seven months ago.
- 20 Q. Are you pursuing an appeal of that
- 21 decision?
- 22 A. Yes.
- 23 Q. Is Binder & Binder helping you with
- 24 that?
- 25 A. Yes.

- 1 Moore
- 2 Q. Have you ever spoken to anyone at the
- 3 scene of the accident about how your accident
- 4 occurred, aside from your attorneys
- 5 obviously?
- 6 A. Not really.
- 7 Q. Has anyone ever indicated to you why
- 8 the concrete at the threshold of the elevator
- 9 shaft crumbled?
- 10 A. No.
- 11 Q. Aside from the potential surgery to
- 12 your right shoulder, have any of your
- 13 physicians recommended any other surgical
- 14 procedures to any other part of your body?
- 15 A. Not yet.
- MR. MC DERMOTT: I don't have
- any further questions. Thank you for
- 18 your time.
- 19 EXAMINATION BY
- 20 MR. VERAS:
- 21 Q. Good afternoon. I represent Arena
- 22 Construction. I'll try to be very brief and
- 23 not repeat any of the questions that you were
- 24 asked this morning. I'll ask for your
- 25 patience.

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<u></u>	Moore

- 2 Going back to the job site at the
- 3 Staten Island Ferry Terminal project. You
- 4 were there approximately four days?
- 5 A. Yes.
- 6 Q. During your involvement over the
- 7 course of the four days at the job site did
- 8 you ever become aware of a company called
- 9 Arena Construction Company at the job site?
- 10 A. I can't say I have.
- 11 Q. Do you know if there was a general
- 12 contractor during the four days at the job
- 13 site?
- 14 A. I thought Skanska was.
- 15 Q. During those four days while at the
- 16 job site did you ever see any Skanska
- 17 employees in or about the area where you were
- 18 working or the areas that you were working?
- 19 A. I don't really recall.
- 20 Q. Going back to the date of your
- 21 accident. Approximately what time did you
- 22 start work that day?
- 23. A. 7:00 we start.
- 24 Q. Do you recall what time of day the
- 25 accident occurred?

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- 2 A. Sometime in the morning.
- 3 Q. When you say sometime in the morning,
- 4 had you been on the job site an hour, a
- 5 couple of hours or something else?
- 6 A. I think a couple of hours.
- 7 Q. During those couple of hours did you
- 8 observe any Skanska employees in or about the
- 9 area where your accident eventually occurred?
- 10 A. I don't remember to tell you the
- 11 truth.
- 12 Q. Do you recall just in general seeing
- 13 Skanska employees at the job site over the
- 14 four days?
- 15 A. Laborers. They were some of the
- 16 Skanska employees.
- 17 Q. How did you know they were Skanska
- 18 laborers?
- 19 A. I think some of them had hard hats on
- 20 them.
- 21 Q. Which said Skanska on them?
- 22 A. Yes.
- 23 Q. Other than the laborers, did you ever
- 24 see any other Skanska employees with hard
- 25 hats or shirts or anything that indicated

- 1 Moore
- 2 that they worked with Skanska?
- 3 A. No, not that I know of.
- 4 Q. Now, you brought your own hard hat to
- 5 the job?
- 6 A. Yes.
- 7 Q. With regard to the four days that you
- 8 were there did McNulty have any type of a
- 9 shanty or trailer at this job site?
- 10 A. It was like a trailer. A tool shed
- 11 really.
- 12 Q. In general what was housed in the tool
- 13 shed?
- 14 A. Tools.
- 15 Q. Were there any types of safety
- 16 devices; eye protection, fall protection,
- 17 maintained in the tool area?
- 18 A. I never seen any.
- 19 Q. Did you ever inquire while you were
- 20 there over those four days whether or not
- 21 McNulty had any type of fall protection at
- 22 this job site?
- 23 A. I didn't ask.
- 24 Q. After your accident occurred, you
- 25 indicated that there was a point in time when

- 1 Moore
- 2 you came to and you were treated by an EMT,
- 3 correct?
- 4 A. Yes.
- 5 Q. Mike was also present at the bottom of
- 6 the shaft?
- 7 A. Yes.
- 8 Q. Do you know how Mike was physically
- 9 able to get down to the bottom of the shaft?
- 10 A. No.
- 11 Q. After you regained consciousness,
- 12 there was a time when you were removed from
- 13 the shaft?
- 14 A. Yes.
- 15 Q. Do you recall how you were removed
- 16 from the shaft?
- 17 A. No.
- 18 Q. Who removed you from the bottom of the
- 19 shaft?
- 20 A. Paramedic.
- 21 Q. Was it more than one?
- 22 A. Yes.
- 23 Q. You don't recall the mechanism of how
- 24 they removed you from the bottom of the
- 25 shaft?

- 1 Moore
- 2 A. No.
- 3 Q. During the time that you've treated
- 4 with Dr. Touliopoulos did he ever recommend
- 5 you or refer you to see a Dr. Caliguiri?
- 6 MR. DIAMOND: Spell that for the
- 7 record.
- MR. VERAS: Sure.
- 9 C-A-L-I-G-U-I-R-I.
- 10 A. No.
- 11 Q. Did Dr. Touliopoulos refer you to any
- 12 doctors during the course of time that you've
- 13 treated with him?
- 14 A. A podiatrist.
- 15 Q. Do you recall the name of the
- 16 podiatrist that he referred you to?
- 17 A. Ivan Herstick.
- 18 Q. Why did Dr. Touliopoulos refer you to
- 19 a podiatrist?
- 20 A. I was starting to have problems with
- 21 my right leg and there was intense pain in my
- 22 right foot, which I still have.
- 23 Q. Did you see the podiatrist?
- 24 A. Yes.
- Q. When did you first see the podiatrist?

- 1 Moore
- 2 A. About four or five months ago.
- 3 Q. On how many occasions did you see the
- 4 podiatrist?
- 5 A. About six.
- 6 Q. What type of treatment did the
- 7 podiatrist provide?
- 8 A. Cortisone shots.
- 9 Q. Did the podiatrist send you for any
- 10 type of diagnostic tests, such as MRIs,
- 11 x-rays?
- 12 A. Yes. That was what was baffling them.
- 13 They did two MRIs of my right foot.
- 14 Q. Where were those MRIs done?
- 15 A. In his office.
- 16 Q. In the podiatrist's office?
- 17 A. Yes.
- 18 Q. Where was the podiatrist's office?
- 19 A. In St. Vincent's Hospital on 12th
- 20 Street and Seventh Avenue.
- 21 Q. Did the podiatrist discuss the results
- 22 of the MRIs to your foot?
- 23 A. They were negative.
- 24 Q. Did the podiatrist provide any other
- 25 treatment other than the cortisone shots?

- 1 Moore
- 2 A. An anti-inflammatory.
- 3 Q. Do you recall the name of it?
- 4 A. No.
- 5 Q. That was an oral medication that you
- 6 took?
- 7 A. Yes.
- 8 Q. Do you still take it?
- 9 A. Yes.
- 10 Q. How often do you take it?
- 11 A. Every night, once a night.
- 12 Q. Do you have any appointments scheduled
- 13 to see the podiatrist presently?
- 14 A. No.
- 15 Q. With regard to the anti-inflammatory
- 16 that you presently take that was prescribed
- 17 by the podiatrist, do you have any refill
- 18 prescriptions presently on that medication?
- 19 A. No.
- 20 Q. Other than the podiatrist, did Dr.
- 21 Touliopoulos send you or recommend you to see
- 22 any other doctors or health care
- 23 professionals?
- 24 A. Initially there was a hand specialist,
- 25 because I was having a problem with my right

- 1 Moore
- 2 hand, but I can't remember the doctor's name.
- 3 I never went to see the doctor.
- 4 Q. Other than the podiatrist and the
- 5 recommendation of the hand specialist, did he
- 6 recommend that you see anyone else?
- 7 A. No.
- 8 Q. During the course of time that you
- 9 treated with Dr. Hausknecht did he ever send
- 10 you for any type of an MRI?
- 11 A. I'm not sure.
- 12 Q. After you began treatment with Dr.
- 13 Hausknecht, do you recall whether or not,
- 14 regardless of whether he sent you or someone
- 15 else, you had an MRI taken of your neck?
- 16 A. I'm not sure.
- 17 Q. Do you recall if you had an MRI taken
- 18 of your head after you started seeing Dr.
- 19 Hausknecht?
- 20 A. I think I did.
- 21 Q. Do you recall where that MRI was
- 22 taken?
- 23 A. I think it was at Middletown Imaging.
- 24 Q. Did anyone, including Dr. Hausknecht,
- 25 ever discuss the results of the MRI of your

107 1 Moore 2 head? If he did, I don't remember. 3 4 Other than Dr. Hausknecht, do you Q. 5 recall discussing the results of those MRIs with anyone else? 6 7 Α. No. 8 With regard to your occupation as an ironworker did you have a union title, such 9 as journeyman? 10 11 Α. Yes. 12 Were you a journeyman ironworker on Q. the day of the accident? 13 14 Α. Yes. 15 At anytime prior to the date of the Q. accident had you ever worked as a foreman on 16 17 any job? 18 Α. No. 19 (Continued on next page.) 20 21 22 23 24 25

Moore With regard to your local and with regard to pay scale were foremen paid more than journeymen in terms of hourly rates? Α. Yes. MR. VERAS: I have nothing further. (Time noted: 1:20 p.m.) JOHN MOORE Subscribed and sworn to before me this day of 2006. Notary Public

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1	
2	CERTIFICATE
3	I, CAROLYN PALADINO, hereby certify
4	that the Examination Before Trial of JOHN
5	MOORE was held before me on the 15th day of
6	September, 2006; that said witness was duly
7	sworn before the commencement of his
8	testimony; that the testimony was taken
9	stenographically by myself and then
10	transcribed by myself; that the party was
11	represented by counsel as appears herein;
12	That the within transcript is a true
. 13	record of the Examination Before Trial of
14	said witness;
15	That I am not connected by blood or
16	marriage with any of the parties; that I am
17	not interested directly or indirectly in the
18	outcome of this matter; that I am not in the
19	employ of any of the counsel.
20	IN WITNESS WHEREOF, I have hereunto set
21	my hand this (f of Sept 2006.
22	$\bigcap \bigcap \bigcap \bigcap \bigcap$
23	arolen Valadina
24	CAROLYN PALADINO
25	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
WAUSAU UNDERWRITERS INSURANCE
COMPANY and AXIS SPECIALTY INSURANCE
COMPANY,

AFFIDAVIT

Plaintiffs,

- against -

INDEX NO.: 06 CV 3212 (VM)

QBE INSURANCE CORPORATION and SCOTTSDALE INSURANCE COMPANY,

THOMAS LYONS, being duly sworn deposes and states:

- 1. This affidavit is made on my personal knowledge.
- 2. I am a project manager for Kel-Tech Construction Co. On July 8, 2004, Kel-Tech Construction Co. started to build the Concrete Masonry Unit (hereinafter referred to as "CMU") block walls on the passenger elevator shaft No. 2 at the St. George Ferry Terminal Project.
- 3. In order to perform our work the inside of the elevator shaft was completely scaffolded and fully planked.
- 4. On July 23, 2004 Mike McFadden, the project manager for Skanska directed Kel-Tech to stop building the walls on this elevator shaft. We were informed that McNulty Steel was required to install steel beams adjacent to the shaft, and that Kel-Tech's continued work in the area would interfere with McNulty's work. Kel-Tech stopped working on that area as instructed, and left the shaft fully planked.
- 5. Sometime after we were instructed to stop work in this area, and before the accident to the McNulty worker I observed one of Skanska's laborers, Mario Nicklo,

demolishing the elevator shaft walls that Kel-Tech had built. He demolished six to seven feet of the walls. As he took down the wall, he lowered a portion of the planks in the elevator shaft.

- 6. Kel-Tech did not return to work to this area from July 23, 2004 to November 8, 2004. In September 2004 I learned that one of McNulty's workers was standing on one of the partially demolished *CMU* walls when he slipped and fell into the elevator shaft.
- 7. At the time of the accident, the area had been substantially changed by Shanska from when Kel-Tech last worked there. Kel-Tech had not worked in the area for almost two months before the accident.

Thomas fyons
THOMAS LYONS

SWORN TO BEFORE ME THIS

. 2006

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BOZENA PIETRUCHA Notary Public - State of New York NO. 01PI4981179 Qualified in Kings Coupty

My Commission Expires 56

50.07.0EC NO.00



CERTIFIED MAIL – RETURN RECEIPT REQUESTED QBE INSURANCE CO WALL STREET PLAZA 88 PINE STREET NEW YORK NY 10005

ATTN: CLAIMS DEPARTMENT

Re:

Claimant:

John Moore

Location: Our Insured:

St. Georges Ferry Jobsite Owen Steel Company, Inc. Kel Tech Construction, Inc.

Your Insured: Date of Loss:

September 16, 2004 P 415-003413-01

Our Claim No.:

Dear Madam or Sir:

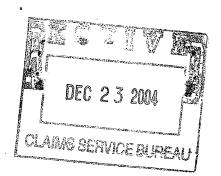
Wausau Insurance Company is currently investigating a bodily injury claim brought by John Moore against New York City Economic Development Corporation ("EDC") and Barney Skanska Construction Company ("Skanska"). Based on our investigation Mr. Moore was injured when he fell down an elevator shaft under construction at the St. Georges Ferry Terminal on September 16, 2004. We understand that Kel Tech was a Contractor for EDC at the time of loss and may have caused or contributed to the injuries sustained by Mr. Moore.

We have obtained a copy of the contract between EDC and Shroid Construction Inc., as well as the Takeover Agreement/Masonry between EDC and Safeco Insurance Company of America.

By receipt of this letter, I hereby request that you defend and indemnify EDC, as well as Skanska with respect to the claims brought by John Moore pursuant to EDC Contract No. 11490018. For your convenience, I have attached a copy of the contract, which sets forth the language in which Your Insured agrees to defend and indemnify EDC and Skanska.

Additionally, I am enclosing, for your convenience, a copy of a Certificate of Insurance in which you have agreed to add EDC and Skanska as additional

December 13, 2004



No Attachment Jure Enclosed insureds. As additional insureds, EDC and Skanska would be entitled to a defense and coverage for the damages claimed by John Moore. Please acknowledge in writing that you will defend EDC and Skanska and provide coverage for the damages claimed.

I trust that you will fulfill your obligations as have been stated above. If either you or Your Insured decline to fulfill the above obligations, please provide a letter that sets forth in detail all bases and grounds, along with all supporting facts.

Thank you for your kind cooperation in this matter.

Sincerely,

Michael Morrissiey

Senior Technical Claims Specialist

cc: Kel Tech Construction, Inc.

> 251 Monitor Street Brooklyn, NY 11222

The Treiber Group, LLC 377 Oak Street CS 601 Garden City, NY 11530-0601



CLAIMS SERVICE BUREAU OF NEW YORK INC.

21 HEMPSTEAD AVENUE P.O. BOX 805 LYNBROOK, N.Y. 11563

(516) 593-2440 (718) 895-2400 FAX: (516) 593-2486 (800) 433-9631

VIA FAX # (315) 461- 3895 & CERTIFIED MAIL RETURN RECEIPT REQUESTED

December 28, 2004

Wausau Insurance Company PO Box 4834 Syracuse, NY 13221-4834

Attn: Michael Morrissiey

Sr. Technical Claims Specialist

RE:

Claimant:

John Moore

Your Insd:

Owen Steel Company, Inc. Kel-Tech Construction, Inc.

Our Insd:

P 415-003413-01

Your Claim: D/L:

9/16/04

Our File:

SIR 026342

Dear Mr. Morrissiey:

Please be advised that Claims Service Bureau of New York, Inc. is the duly authorized claims representative for QBE Insurance Corp., the commercial general liability insurance carrier for Kel-Tech Construction, Inc. in the above-referenced matter.

Under Policy Number HBG 00208-3, QBE Insurance Corp. provides general liability insurance coverage to Kel-Tech Construction, Inc. in the amount of \$1 million per occurrence.

Please allow this correspondence to respond to your December 13, 2004 request for defense and indemnification for Barney Skanska Construction Company and the New York City Economic Development Corp.

The above-mentioned claim involves John Moore, an employee of McNulty Steel, was installing steel beams. While he was walking on top of a concrete elevator shaft, he was caused to lose his balance and fell into the elevator shaft.

-2-

At this time, we respectfully direct your attention to commercial general liability coverage form, CG 00 01 07 98, which states as follows:

SECTION 1 – COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

- 1. Insuring Agreement
 - a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
 - (1) The amount we will pay for damages is limited as described in Section III Limits of Insurance; and
 - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

<u>SUPPLEMENTARY PAYMENTS – COVERAGES A AND B</u>

- f. The Indemnitee
 - (1) Agrees in writing to:

- 3 -

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit":
- (c) Notify any other insurer whose coverage is available to the Indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the Indemnitee; and
- (2) Provide us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the Indemnitee in such "suit".

So long as the above conditions are met, attorney's fees incurred by us in the defense of that Indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the Indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph 2.b (2) of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section 1 – Coverages), such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's Indemnitee and to pay for attorney's fees and necessary litigation expenses as Supplementary Payments ends when:

a. We have used up the applicable limit of insurance in the payment of judgments or settlement; or

-4-

b. The conditions set forth above or the terms of the agreement described in Paragraph 1 above are no longer met.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

- 2. Duties In The Event of Occurrence, Offense, Claim or Suit
 - a. You must see to it that we are notified as soon as practicable of an "occurrence" or offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses;
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
 - b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.
 - c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;

- 5 -

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

Because Article 2(a) Section IV – Commercial General Liability Conditions clearly requires that "you must see to it that we are notified as soon as practicable of an occurrence or an offense which may result in a claim", we find it necessary to formally disclaim coverage to Barney Skanska Construction Company due to late notice under Policy Number HBG 00208-3.

Please further be advised that our investigation revealed that one of Skanska's laborers, Mario Nicklo, demolished a portion of the elevator shaft and walls, which Kel Tech had constructed. We also learned that Mr. Nicklo lowered some of the planks on Kel Tech's scaffold to perform his work, but did not fully plank out the scaffolding on the level where he was working.

Please be advised that QBE's Additional Insured Endorsement, QBCG-0102 states:

WHO IS AN INSURED (Section II) is amended to include as an Insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that Insured by or for you."

- 6 -

Based upon our investigation, it would appear that Mr. Moore's accident was the result of Skanska's work and independent negligence. Even assuming that Barney Skanska Construction Company did not provide late notice to QBE Insurance Corp. with respect to this matter, which QBE disputes, QBE rejects your request for defense and indemnification for The City of New York and Barney Skanska Construction Company since Mr. Moore's accident did not arise out of Kel Tech's negligence or work.

Please accept this letter as a formal disclaimer of coverage under policy number HBG 00208-3 due to late notice and due to the fact that Mr. Moore's accident did not arise out of Kel Tech's negligence or work.

QBE Insurance Corp. will not provide defense or indemnification to The City of New York or Barney Skanska Construction Company for this matter.

As there will be no coverage afforded for the above-referenced loss under QBE Insurance Corp.'s general liability policy number HBG 00208-3, we strongly recommend that you retain Counsel at your insured's expense, if necessary, to protect your insured's legal interests in this claim.

Please be advised, however, that legal fees and expenses generated in connection with your insured's defense will not be reimbursed by QBE Insurance Corp. under commercial general liability insurance policy number HBG 00208-3 or under any other QBE Insurance Corp. general liability policy of insurance.

The contents of this letter should not be construed as a list of all possible reasons for the denial of coverage, and QBE Insurance Corp. specifically reserves the right to raise additional defenses at a later date.

This letter should also not be construed as a waiver of the terms and conditions set forth in the policy, and QBE Insurance Corp. does not waive its right to rely on all conditions within the policy, both now and in the future.

QBE Insurance Corp. specifically reserves the right to rely on the conditions of the policy should additional or new allegations arise out of this incident.

-7-

We trust this adequately apprises you of QBE Insurance Corp.'s coverage position with respect to general liability policy number HBG 00208-3.

If you wish to request a reconsideration with respect to this determination, you must do so in writing, directed to the attention of the undersigned. Please note that no telephone requests for reconsideration, interposed by either the insured directly or a representative of the insured, will be entertained.

Should you wish to request a reconsideration, please forward your written request to the attention of the undersigned, including all documentation and additional information supporting your request, promptly upon your receipt of this letter.

Very truly yours,

CLAIMS SERVICE BUREAU OF NEW YORK, INC.

By: Robert T. Riccobono, CPCU RTR/kmo

cc: Barney Skanska Construction Company, One Bay Street, Staten Island, NY, 10301, via certified mail, return receipt requested

cc: The Treiber Group, LLC, 377 Oak Street, CS 601, Garden City, NY, 11530-0601

cc: Kel Tech Construction, Inc., 251 Monitor Street, Brooklyn, NY, 11222

cc: Hartan Brokerage, Inc., 33 West 60th Street, 6th Floor, New York, NY 10023, Attn: Brenda McGovern, via e-mail

cc: QBE Insurance Corp., Wall Street Plaza, 88 Pine Street, 16th Floor, New York, NY 10005, Attn: Kenneth Jackson, AVP, via e-mail

JAFFE & ASHER LLP

ATTORNEYS AT LAW

PLEASE REPLY TO NEW YORK OFFICE

600 THIRD AVENUE

NEW YORK, NY 10016-1901

(212) 687-3000

(212) 687-9639 (FAX)

ESTABLISHED 1974

NEW JERSEY OFFICE

I 107 GOFFLE ROAD HAWTHORNE, NJ 07507-0508 (973) 423-3998 (973) 423-6074 (FAX)

July 20, 2006

VIA ECF

Hon. Victor Marrero United States Courthouse 500 Pearl Street New York, NY 10007

Re: Wausau Underwriters Ins. Co. et al. v. QBE Ins. Corp., et al.

Civil Action No. 06 Civ. 3212 (VM)

Dear Judge Marrero:

The parties jointly submit this letter pursuant to the Notice of Initial Conference, dated June 30, 2006.

DESCRIPTION OF CASE

All of the parties to this lawsuit are insurance companies. The instant lawsuit seeks a declaration of the insurers' respective rights and obligations with respect to the defense and indemnity of the New York City Economic Development Corp. ("NYC EDC") and Barney Skanska Construction Co. ("Skanska") in an underlying action entitled John Moore v. New York City Economic Development Corp., New York City Department of Transportation, Barney Skanska Construction Company, Kel Tech Construction Inc., Index No. 13658/04, which is pending in the Supreme Court of the State of New York, County of Richmond (the "Underlying Action").

Plaintiff AXIS SPECIALTY INSURANCE COMPANY ("AXIS") is providing a defense to NYC EDC and Skanska for the Underlying Action. UNDERWRITERS INSURANCE COMPANY ("Wausau") also insures NYC EDC and Skanska for the Underlying Action.

Hon. Victor Marrero Page 2 July 20, 2006

John Moore ("Moore") commenced the Underlying Act on against NYC EDC, New York City Department of Transportation ("NYC DOT"), Skanska, and Kel-Tech Constructions, Inc. ("Kel-Tech") on or about December 17, 2004. Moore alleges that he was injured at the St. George Ferry Terminal jobsite, in Richmond County, New York, on September 16, 2004.

Skanska was the Construction Manager for the job. Owen Steel Company, Inc. ("Owen Steel") was a steel subcontractor for the Project. AJ Mc Nuity & Co. ("McNuity"), Moore's employer, was a subcontractor of Owen Steel, and responsible for steel erection. Kel-Tech was a masonry subcontractor for NYC EDC. There was another masonry subcontractor, Arena Construction Co., Inc. ("Arena"). Wasau and AXIS contend that Kel-Tech owned the scaffold from which Moore fell, and built the block wall which gave way, causing the fall. Wausau and AXIS contend that Arena demolished a portion of the wall before the accident.

Pursuant to its contract with the NYC EDC, Kel-Tech agreed to obtain a liability insurance policy, which policy was to include NYC EDC and Skanska as additional insureds. Kel-Tech complied with its contractual obligations by obtaining coverage from defendant QBE INSURANCE CORPORATION ("QBE").

The NYC EDC had also entered into a contract with Arena, pursuant to which Arena agreed to provide masonry work for the Project. The contract between the NYC EDC and Arena required Arena to maintain liability insurance coverage, which insurance coverage was to include Skanska and the NYC EDU as additional insureds. Arena complied with its insurance obligations for the Project by obtaining a liability insurance policy from defendant SCOTTSDALE INSURANCE COMPANY ("Scottsdale").

Wausau and AXIS contend that Skanska and the NYC EDU are additional insureds under the policy issued by QBE to Kel-Tech and under the policy issued by Scottsdale to Arena for claims alleged in the Underlying Action. Wausau and AXIS further contend that the coverage afforded by both QBE and Scottsdale is primary to the coverage afforded by both Wausau and AXIS.

QBE does not dispute that it issued a Commercial General Liability policy (No. HBG00208-3) to Kel-Tech, which was in effect on September 16, 2004, the date of Moore's alleged accident. QBE contends that it disclaimed coverage to Skanska and NYC EDU on two grounds. First, QBE contends it was not notified as soon as practicable of the occurrence. Second, QBE contends that the accident did not a rise from Kel-Tech's work and, thus, Skanska and NYC EDU are not additional insureds for this claim. QBE asserts that the evidence will demonstrate that Kel-Tech had not worked on the area where the alleged accident occurred for almost two months prior to its occurrence. QBE further

Hon. Victor Marrero Page 3 July 20, 2006

contends that it will be established that Skanska and/or NYC EDU either performed work or directed other contractors to perform work at the location which created the conditions leading to the occurrence.

Scottsdale denies that this loss triggers "additional insured" coverage under its policy. The incident did not take place at a covered loss location. Moreover, Scottsdale contends that any liability attributable to NYC EDC or Skanska did not arise out of the work or operation of Arena. Even if NYC EDC or Skanska qualified as additional insureds under the Scottsdale policy issued to Arena, NYC EDC and Skanska failed to satisfy certain conditions to the policy which negates any coverage that may have otherwise been available. Scottsdale also submits that the carrier for the employer of the injured employee owes primary additional insured coverage rather than the carrier for another subcontractor at the jobsite.

CONTEMPLATED MOTIONS

Wausau and AXIS intend to seek to move for summary judgment after document discovery is completed. QBE intends to move for summary judgment upon completion of pretrial discovery. Scottsdale intends to move for summary judgment after mandatory disclosures are completed.

PROSPECT FOR SETTLEMENT

There is no prospect for settlement.

Please note that the parties do not consent to proceed for all purposes before the Magistrate Judge.

Respectfully submitted,

Jaffe & Asher, LLP Counsel for Plaintiffs

R√

Marshall T. Potashner, Esq. (MTP-3552)

Case 1:06-cv-03212-VM-THK

Document 27-9

Filed 11/09/2006

Page 4 of 4

Hon. Victor Marrero Page 4 July 20, 2006

Wilson, Bave, Conboy, Cozza & Couzens, P.C. Counsel for Defendant
QBE INSURANCE COMPANY

By William H. Bave, Jr. (WHB-0349)

Kral, Clerkin, Redmond, Ryan, Perry & Girvan, LLP Counsel for Defendant SCOTTSDALE INSURANCE COMPANY

By Leonard Porcelli, Esq. (LP-5998)

1	1
2 3	JOHN MOORE 2004 PI 020981 015-220
4	X In the Matter of the Claim of:
5	JOHN MOORE,
6	Claimant,
7	-against-
8	THE CITY OF NEW YORK,
9	Respondent.
10	X
11	
12	61 Broadway
13	New York, New York
14	December 9, 2004 3:30 P.M.
15	50-h HEARING of JOHN MOORE, the Claimant herein,
16	taken by the attorney for the Respondent, pursuant to
17	Section 50(h) of the General Municipal Law, held at the
18	above-noted time and place before a Notary Public of
19	the State of New York.
20	
21	
22	
23	
24	
25	
-	

Case	e 1:06-cv-03212-VM-THK Document 27-10 Filed 11/09/2006 Page 2 of	f 32 `
	2	
1	~	N. W.
2		ewangsper rangg
3	APPEARANCES:	
4		
5		100 mm
6	SACKS & SACKS	
7	Attorneys for John Moore 150 Broadway, 4th Floor	
8	New York, New York 10038	
9	BY: ANDREW R. DIAMOND	- Valence Const
10		
11		
12		
13	JANE N. BARRETT, ESQ.	
14	Attorney for the City of New York 61 Broadway	
15	New York, New York 10006	
	BY: CASEY MCARDLE, ESQ.	
16	BLA NO.: 2004 PI 02981	
17		
18		SPREACHER SPREAC
19		
20		
21		
22		
23		

	1	JOHN MOORE,
	2	The witness herein, having first been duly sworr
	3	by Joseph J. Pontillo, a Notary Public in and for the
	4	State of New York, was examined and testified as
	5	follows:
	6	DIRECT EXAMINATION BY CASEY MCARDLE, ESQ.:
	7	Q State your name for the record, please.
	8	A John Moore.
	9	Q What is your address?
	10	A 421 Walnut Street, Port Monmouth, New
	11	Jersey, 07758.
	12	Q Good afternoon, Mr. Moore. My name is
	13	Casey Mcardle. I represent the City for this
	14	hearing. I'm going to ask you some questions. If
	15	you don't understand my question, please tell me or
	16	your attorney before you respond. Otherwise, if you
	17	respond it means you understood the question. Do
	18	you understand everything so far?
	19	A Yes.
1	20	Q What is your date of birth?
2	21	A 9/16/55.
2	22	Q What is your Social Security number?
2	23	A 112-48-3973.
2	24	Q Are you currently employed?
2	5	A No.

	.1		JOHN MOORE
	2	Q	What is the last time you were employed?
	. 3	A	September 16, 2004.
	4	Q	Is that your birthday?
	5	· A	Yes.
	6	Q	Where were you employed at that time?
	7	А	Saint George's Terminal in Staten Island.
	8	Q	Who was your employer?
	9	А	A.J. McNulty.
	10	Q	What is A.J. McNulty in the business of?
	11	A	Iron work.
	12	Q	What did you do for them?
	13	A	Erection.
	14	Q	Did you have other job duties there?
	15	A	Just erection.
	16	Q	Erection of what?
-	L 7	A	Iron.
1	18	Q ,	How long did work there?
1	.9	A	Four days.
2	20	Q	How long did you work for A.J. McNulty
2	1	before 9/1	6/04?
2	2	Α	I hadn't worked for them in years.
2	3	Q	When was the last time you worked before
2	4	you worked	for several days for A.J. McNulty at that
2	5	location?	

				į
	1		JOHN MOORE	•
	2	А	A week or so.	
İ	3	Q	Where was the last location you worked	
	4	before t	hat?	
	5	A	The Sloan-Kettering Building for Cornell	
	6	Iron Wor	ks.	
	7	Q	How long did you work with them?	
	8	А	Six months.	
	9	Q	Are you a member of a union?	
	10	А	Local 40.	
	11	Q	Prior to the work that you did at	
	12	Sloan-Ke	ttering with Cornell, where did work before	
	13	that?		
	14	A	To be honest, I don't recall.	
	15	Q	Were you working regularly before that?	
•	16	A	Yes, I have been for twenty-five years.	
-	17	Q	Who do you live with?	
J	18	A	My girlfriend and my son and her children.	
1	L9	Q	What is your girlfriend's name?	
2	20	А	Susan Catapano.	
2	21	Q	What is you son's name that you live with?	
2	2	А	Michael Moore.	
2	3	Q	What are the other children's names that	
2	4	you live	with?	
2	5	A	Catarina, Jessica and Jimmy.	

				_
	1		JOHN MOORE	6
	2	Q	What are their ages?	
	3	А	They are fourteen, eighteen and twenty.	
	4	Q	Do you live with anybody else?	
	5	\mathbf{A}^{\cdot}	No.	
	6	Q	How long have you lived at your present	
	7	address?		
	8	A	Six years.	
	9	Q	Where did you live immediately before	
	10	that?		
	11	A	Westchester County, Dobb's Ferry.	
	12	Q	How long did you live there?	
	13	А	About ten or eleven years.	
	14	Q	Have you ever been legally married?	
	15	A	Yes.	
-	16	Q	Who were you married to?	
1	17	А	Caroline Kidney.	
1	18	Q	Is that the only person that you have been	
1	L9	married t	5?	
2	20	A	Yes.	
2	21	Q	Are you currently married, separated,	
2	2	divorced (or something else?	
2	3	A	No.	
2	4	Q	What are you?	
2	5	A	We are engaged.	

•	1		JOHN MOORE
	2	Q	Who are you engaged to?
	3	A	Susan Catapano.
	4	Q	What is your martial status?
	5	A	I'm engaged.
	6		MR. DIAMOND: She means to Caroline.
	7	A	I have been divorced for fifteen years.
	8	Q	Were you involved in an accident that took
	9	place som	etime this year?
	10	A	Yes.
	11	Q	What was the date of the accident?
	12	А	9/16/04.
	13	Q	Where did it occur?
	14	A.	Staten Island at the Saint George's Ferry
	15	Terminal.	
	16	Q	How many terminals are there for the ferry
	17	there?	
	18	А	I don't know.
	19	Q	Do you know how to identify with more
12	20	specificit	y where exactly you were when the accident
12	21	happened a	t the Saint George's Terminal on Staten
2	22	Island?	
2	23]	MR. DIAMOND: What were you working on?
2	:4	Descr	ibe the structure.
2	5	A	We were putting a beam in. It was an

JOHN MOORE

- 2 addition in a renovation. I'm not sure what you're
- 3 looking for.

- 4 Q You said you were at the Saint George's
- 5 Terminal at the Staten Island Ferry.
- 6 A Yes.
- 7 Q How big is the Saint George's Terminal at
- 8 the Staten Island Ferry?
- 9 A Five blocks wide, about two or three blocks
- 10 from the water to the street.
- 11 Q What part of it specifically were you at
- 12 when your accident happened?
- 13 A I don't know.
- MR. DIAMOND: She means were you working
- at the building? Is there any way to pinpoint
- 16 what you were working on so she can get an
- 17 understanding of where.
- A We were building a new terminal, I think.
- 19 Q Were there any markings or designations
- 20 that said exactly where you were at the terminal at
- 21 the time of your accident?
- 22 A No.
- Q Was there a building near you?
- 24 A Yes, there was, a couple of a hundred feet
- 25 away. It was also a new addition.

	1	JOHN MOORE
	2	Q Were you outside at the time?
	3	A Yes.
	4	Q Do you know the name of the building that
	5	was a couple of hundred feet away?
	6	A No.
	7	Q Do you know the number or street address
	8	to that building, if there is one?
	9	A No. When I was sent from the union hall
	10	it was just Saint George's Terminal at the Staten
	11	Island Ferry.
	12	Q Do you know what that building that was a
	13	couple of hundred feet away from where your accident
	14	happened housed? What was inside that building?
	15	What was the building used for?
	16	A No, I don't know. I imagine it was for
	17	buses. There was a lot of buses that waited for the
-	18	people to come off the ferry. We were working about
]	L9	twenty feet away from a ramp that exited the terminal
2	20	into the street.
2	21	Q Into what street?
2	22	A I don't know. I'm not familiar with
2	:3	Staten Island. I don't know the name of the blocks.
2	4	Q Do you recall seeing any structures across
2	5	the street from where you were working.

JOHN MOORE

-	CIII	11001(11)

- 2 A On the other side of the street, yes.
- 3 There was a big structure there. I don't know if it
- 4 was a post office or a library.
- 5 Q Maybe a courthouse.
- 6 A Yes.
- 7 Q How far were you from the sidewalk of the
- 8 street?
- 9 A A quarter mile.
- MR. DIAMOND: Off the record.
- 11 (Whereupon, a discussion was held off
- 12 the record.)
- 13 Q How high up were you from ground level at
- 14 the time of your accident?
- 15 A From ground, I was one floor.
- Q Can you estimate how many feet you were
- 17 from ground level at the place you were at the time
- 18 the accident happened?
- 19 A Ten or twelve feet.
- 20 Q What were you resting your body on at the
- 21 time?
- 22 A I wasn't resting it on anything. I was
- 23 helping push a beam.
- Q Were you standing on something?
- 25 A I was on cinder blocks that were right

prior to the accident?

	1		
ı	1		JOHN MOORE
	2		MR. DIAMOND: Over objection, you can
	3	ans	wer.
	4	А	Yes, when it's suspend in the air by a
	5	crane it	gives it a swing where you are not actually
	6	pushing	the whole weight of the beam itself. You're
	7	trying t	o guide it in.
	8	Q	Was anybody else pushing simultaneously
	9	with you	?
	10	А	Yes.
	11	Q	Who else?
	12	A	Bob, I don't know his last name.
	13	Q	Did you speak to Bob before you began
	14	pushing t	the beam about the manner in which you were
	15	going to	push the beam?
	16	A	Yes. We understood we were going push it
	17	to the co	nnector so he could make his bolts.
	18	Q	How did you understand that?
	19	А	How do I know that I understood that?
	20	Q	Yes, and he understood that.
	21	А	We had been doing it for years.
:	22	Q	Had you worked with him prior to the
2	23	accident?	
2	24	А	Yes.
2	25	Q	What caused you to fall backwards in the

- JOHN MOORE
- 2 accident?
- 3 A The concrete I was standing on, the cinder
- 4 block shaft, it busted up.
- 5 Q At the time of the accident, were you in
- 6 an upright position?
- 7 A Yes.
- 8 Q When you say the cinder block busted up,
- 9 what do you mean by that?
- 10 A It broke off.
- 11 Q Broke off from what?
- 12 A From the existing foundation that it was
- 13 supposed to have been chopped out of, but it
- 14 evidently wasn't. It was --
- MR. DIAMOND: Where did it break off
- from, is her question.
- 17 A The foundation.
- 18 Q Can you describe the foundation that you
- 19 are referring to?
- 20 A The wall of the elevator shaft.
- 21 Q In the place where you were standing on
- 22 the cinder block, at the time that you pushed the
- 23 beam, were you in the elevator shaft?
- A No, I was standing on the threshold of the
- 25 elevator shaft.

	1	JOHN MOORE
	2	Q How many feet were you from the elevator
	3	shaft at that time or any other measurement?
	4	A A foot or two feet, maybe.
	5	Q Where was that, in front of you, to the
	6	left, right or something else?
	7	A Behind me.
	8	Q Did you notice that the elevator was not
	9	blocked off?
	10	MS. McARDLE: I don't want to
	11	mischaracterize the term that he used.
	12	MR. DIAMOND: That's okay, I appreciate
	13	that. Off the record.
	14	(Whereupon, a discussion was held off the
	15	record.)
:	16	Q I'll rephrase. At the time of your
:	17	accident, were you aware that there was nothing
	L8	between where you were standing and the elevator
1	9	shaft?
2	20	MR. DIAMOND: Over objection to form, you
2	1	can answer. Do you understand the question?
2	2	THE WITNESS: No.
2	3	Q Was there anything between behind you and
2	4	the elevator shaft when the accident happened?
2	5	A No.

	l	•	
	1		JOHN MOORE
	2	Q	Were you aware of that before the accident
	3	happened	1?
	4	А	Yes.
	5	Q	Was the movement of the beam the cause of
	6	you fal]	ing backward?
	7		MR. DIAMOND: I'll object to the form.
	8	Car	you rephrase the question.
	9	Q	Are you aware of whether the movement of
	10	the beam	caused you to fall backward?
	11		MR. DIAMOND: Did it contribute, aside
	12	fro	m what he already testified to, about the
	13	bre	aking of the cinder block?
	14	Q	Aside from what you already testified to.
-	15	A	No.
1	16	Q	Do you know what happened to the beam when
1	17	you fell?	
1	L8	А	No, I was unconscious.
1	19	Q	For how long?
2	20	A	From what I understand, a half hour or so.
2	1	Q	Do you know what you landed on?
2	2	А	The concrete.
2	3	Q	Do you recall landing?
2	4	A	No.
25	5	Q	What is the last thing that you remember

	1		
	1	JOHN MOORE	.7
	2	in the accident?	
	3	A The concrete breaking off and me grasping	
	4	for something so I wouldn't fall.	
	5	Q Did you grasp for something?	
	6	A I tried to grasp for something.	
	7	Q Do you know what you were grasping for?	
į	8	A Anything.	
	9	Q Did you come in contact with anything while	
	10	you were attempting to grasp for something?	CONTRACTOR OF THE PERSON
	11	A I must have, because I shattered my arm.	an explorer
	12	Q Which arm?	
	13	A My right arm.	(Charles Special)
	14	Q Aside from the injury to your right arm,	Water Special
	15	did you injure any other part of your body in the	Constant Section
	16	accident?	designation of
	17	A My shoulder, my neck, my back, my head, my	S. San
	18	knees, my ankles.	
	19	Q Which shoulder?	A CONTRACTOR OF THE PARTY OF TH
	20	A My right shoulder.	The second second
2	21	Q What injury did you sustain to your right	A STATE OF THE STA
2	22	shoulder?	200
2	23	A I'm waiting for an MRI. They believe it's	TO CONTRACTOR OF THE PARTY OF T
2	24	a torn rotator cuff.	No.
2	5	Q Aside from what you described about the	electric designation of the second
			1000

	1	JOHN MOORE
	2	shattering injury to your right arm, were you given a
į	3	diagnosis of the injury to your right arm following
	4	the incident by a medical practitioner of some kind?
	5	A After the x-rays?
	6	MR. DIAMOND: At any time, has any one
	7	diagnosed your injury other than what you
	8	said about it being shattered?
	9	A Of my arm and shoulder or just my arm?
	10	Q Just the right arm.
	11	A I broke off a piece of the elbow and it
	12	floated down into my forearm. They had to
	13	subsequently retrieve the bone within the forearm.
	14	After I had the operation, I was in a cast
:	15	which I just got off about ten days ago.
:	16	Q Was any surgery performed to your right
]	17	elbow?
1	.8	A Yes.
1	.9	Q What surgery was performed to your right
2	0	elbow?
2	1	A Replacing the chip. You have a point on
2	2	your elbow, I no longer have a point on my elbow.
2	3	Q Do you know what it was replaced with?
24	4	A No.
25	5	Q Can you indicate the place on the forearm

Q

Is that the only surgery that you have

	1		JOHN MOORE	21
	2	undergo	ne in connection with this accident?	
	3	A	So far.	
	4	Q	Are you scheduled to have any more in the	
	5	future?		
	6	А	My rotator cuff and my shoulder.	
	7	Q	When is that scheduled for?	
	8	А	We are waiting on the MRI.	
	9		MR. DIAMOND: Off the record.	
	10		(Whereupon, a discussion was held off the	
	11	re	cord.)	
	12	Q	What injuries did you sustain to your	
	13	neck?	•	
	14	A	We're waiting for the MRI on that as well.	
i	15	He belie	ves from the x-ray that I cracked a vertebra	
	16	in my neo	ck.	
	17	Q	Did you ever injure your neck before this	
	18	accident?		
	19	А	No.	
	20	Q	Did you ever injure your right shoulder	
	21	before th	is accident?	
	22	A	No.	
	23	Q	Did you ever have an MRI to your right	
	24	shoulder 1	pefore this accident?	
	25	A	No.	
				- 13

	1		23
	1	JOHN MOORE	
	2	that you were told you sustained to your back in th	ıe
	3	accident, aside from that it is the lower level of	
	4	your back and it involves disks?	
	5	A Just that my whole back was black and	
	6	blue.	
	7	Q What injury did you sustain to your head	
	8	in this accident?	
	9	A I had a cut back here, I was unconscious.	
	10	(Indicating)	7
	11	Q Are you indicating the back of your head?	A CONTRACTOR
	12	A Yes. I was unconscious for a while.	200000000000000000000000000000000000000
	13	Q Can you describe the size of the cut?	
	14	A Two and a half to three inches. I'm just	200
	15	guessing.	×
	16	Q Did you have stitches to the back of the	Living Stars
	17	head?	2006
	18	A Yes.	207 5.7
	19	Q Do you know how many?	
2	20	A About six or seven.	Man 2 areas
2	21	Q What injuries did you sustain to your	Z-72-2
2	22	knees in the accident?	
2	:3	A Nothing showed up on the x-rays, but I	
2	4	have to wear those pull up knee things now.	Service Servic
2	5	Q Do you know what they are for?	7

									2	4
1			JC	NHC	MOORE					
2	-			_						
2	A	I wear	them f	or	support	SO	I'm	not	limpina	

- 4 Q Were they prescribed?
- 5 A No.

around.

- 6 Q Have you received treatment to the knees
- 7 in connection with this accident?
- 8 A No. I've been doing physical therapy for
- 9 my back.

- 10 Q What about the knees?
- 11 A Nothing showed up on the x-rays, so I
- 12 haven't. There is no visual thing, but I experience
- 13 pain.
- 14 Q Have you talked to a doctor or a medical
- 15 practitioner about the pain in your knees?
- 16 A Yes.
- Q Who have you spoken to about that?
- 18 A The orthopedic surgeon that is working on
- 19 my shoulder and elbow.
- Q What is his or her name?
- 21 A Dr. Touliopoulos.
- Q What did Dr. Touliopoulos tell you about
- 23 the condition of your knees?
- A He said it's probably connected to the
- 25 fall.

	1	JOHN MOORE
	2	Q Were you ever given a diagnosis about the
	3	knees following the accident?
	4	A No.
	5	Q Did you receive any physical therapy to
	6	the knees?
	7	A Yes, I do light exercises at physical
	8	therapy for the knees.
	9	Q Where do you go for physical therapy?
	10	A Holmdel, New Jersey.
	11	Q What is the name of the facility?
	12	A Procare Rehabilitation Services.
	13	Q Do you know the street address?
	14	A Highway 35. I don't know the exact number.
	15	I know how to get there by landmarks.
:	16	Q Did you suffer any cognitive injuries that
	L7	you are aware of?
1	.8	A What is cognitive.
1	.9	Q Thinking.
2	0	A Yeah.
2	1	Q Were you told by a medical practitioner of
2	2	some kind that you had suffered cognitive injuries
2.	3	in this accident?
24	4	A I have only seen the neurologist twice.
25	5	Q What is that person's name?
Name of the last o		

had the forgetfulness that you spoke to Dr.

23 ankles in the accident?

24 Nothing was revealed on the x-rays, but to

support myself walking, I have to wear these things. 25

1	JOHN MOORE	
_		

- 2 (Indicating)
- MR. DIAMOND: Indicating an ace bandage.
- 4 Q Do you know what happened to your ankles
- 5 in the accident?
- A No, I don't remember a whole lot about the
- 7 accident.
- 8 Q Were there any markings on your ankles
- 9 after the accident?
- 10 A No.
- Q Were there any markings on your knees
- 12 after the accident?
- 13 A No.
- Q Was there any kind of markings on your
- 15 right shoulder after the accident?
- 16 A Black and blue and scrapes.
- 17 Q Do you know what your shoulder came in
- 18 contact with in the accident?
- 19 A No.
- Q What time of day was the accident?
- 21 A In the morning.
- 22 Q Can you be more specific?
- 23 A It was, I guess, around eight or nine in
- 24 the morning. We start at seven. It was pretty much
- 25 one of the first things we did that day.

	1		JOHN MOORE	29
	2	Q	What was weather like at the time?	
	3	А	A little cloudy, I think.	
	4	Q	Was there anything overhead of you at the	ž
	5	place wh	mere the accident happened?	
	6		MR. DIAMOND: Do you mean covering him?	
	7	Q	Anything overhead except for the sky?	
	8	A	The boom of the crane.	
	9	Q	How high overhead was it?	
	10	А	Do you want me to guess?	
	11		MR. DIAMOND: No.	
	12	Q	Approximately, don't guess.	
	13		MR. DIAMOND: If you can, give an	
	14	esti	imate. If you cannot, don't guess.	
	15	А	Not really.	
	16	Q	Where was the crane itself in relation to	,
:	17	where you	were at the time of the accident?	
1	L8	A	To my right.	
1	.9	Q	Was it at ground level?	
2	20	A	Yes.	
2	1	Q	Was somebody operating it?	
2	2	А	Yes.	
2	3	Q	Who was operating it?	
2	4	А	I don't remember. An operating engineer.	
2	5	I don't re	emember his name.	
				H

30 1 JOHN MOORE 2 Do you have any pictures of the accident Q 3 site? 4 Α No. Do you know if any were taken? 6 Α I don't know. 7 Did anyone ever tell you that they were? Q 8 Α No. 9 Q Did anyone ever return to the site on your behalf to take pictures of the accident site? 10 11 Α I don't know. I'm not trying to be 12 difficult. 13 I don't think you're trying to be difficult. 14 Do you know what happened to the cinder 15 block that you were standing on at the time of the 16 accident? 17 Α No. 18 Q Who was your immediate supervisor at the 19 time? 20 Α I don't remember his name, it was the first time I worked for him. 21 22

23

24

25

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Α

to fifty. He was out of my local but there's a

thousand guys in my local. I may know a hundred

A black gentleman, close to my age, close

What did he look like?

- JOHN MOORE
- 2 fifty. I've been in that local twenty-five years.
- 3 Q Do you know what caused the part of the
- 4 cinder block to break off in the accident?
- 5 A My estimation?
- 6 MR. DIAMOND: No, you can't guess.
- 7 She's asking if you know.
- 8 Q In your experience.
- 9 MR. DIAMOND: No, I object to that.
- He's not here as an expert. He either knows
- or doesn't. It's not an experience question.
- 12 Q Do you know what caused the cinder block
- 13 to break off in part?
- 14 A No.
- 15 Q Did you ever have a conversation with
- 16 anybody about what might have caused the cinder
- 17 block to break off, aside from conversations with
- 18 your attorney?
- MR. DIAMOND: Objection to the form
- of the question.
- 21 A No.
- Q Did you hear of any complaints made about
- 23 that particular cinder block you were standing on at
- 24 the time of your accident before your accident
- 25 happened?

-				
1			TATIOT.	MOORE
_			OOTITA	MOOKE

- 2 A No.
- 3 Q Did you yourself complain about the cinder
- 4 block before the accident?
- 5 A It was the first time I worked in that
- 6 area.
- Were there any indications that the cinder
- 8 block was about to break before your accident?
- 9 A No.
- 10 Q Did you hear any noise of any kind before
- 11 the accident?
- 12 A No.
- Q Did you feel anything underfoot that gave
- 14 an indication that the cinder block was about to
- 15 give way in the place where you were standing?
- 16 A Yes, it broke off and it was too late.
- Q What did it feel like as it was breaking
- 18 off?
- 19 A Like a snapping and crumbling. Guys had
- 20 been complaining for days about the fact that that
- 21 elevator shaft shouldn't have been erected until we
- 22 had the iron in there already.
- Q Did they say why it shouldn't have been
- 24 erected before you had the iron in there already?
- A Because it was in the way of us putting in

	1			
	1		JOHN MOORE	33
	2	the bea	ms.	
	3	Q	Do you know who erected it, the elevator	
	4	shaft?		
	5	А	No, I don't know.	
	6	Q	Is that something that A.J. McNulty would	
	7	do on tl	ne job?	
	8	A	No.	
	9	Q	Were there other contractors on the job?	
	10	A	Yes.	. Total
	11	Q	What are their names?	1 1 1 1 1 1 1
	12	A	I think Skanska.	1,77
	13	Q	Do you know who the general contractor was	
	14	on the s	ite?	
	15	A	Skanska	
	16	Q	How many other contractors were on the site	e
	17	aside fro	om Skanska and A.J. McNulty?	
	18	A	There had to be electricians, plumbers	 X
	19	steamfitt	ters, laborers.	Ħ
	20	Q	Was there a site safety contractor there?	
2	21	A	I never met him.	; ; ;
2	22	Q	Did you observe any safety inspectors at	
2	23	the site?		
2	4	А	No.	
2	5	Q	Do you know which of those contractors	
			. ·	1

25

would be able to recognize somebody from

the City that had a role regarding this project

	1	JOHN MOORE
	2	in some way.
	3	MS. McARDLE: I'll rephrase it.
	4	Q Did you ever see any employees of the City
	5	of New York that you believed had some role in the
	6	construction at the site before your accident
	7	happened?
	8	A No.
	9	Q Did you ever attend any safety meetings
	10	about the work performed there?
	11	A No.
	12	MR. DIAMOND: Note my objection to the
	13	form.
	14	MS. McARDLE: What is the objection?
	15	MR. DIAMOND: Is assumes there were
	16	meetings.
	17	MS. McARDLE: There may not have been any.
	18	MR. DIAMOND: You have his answer.
:	19	Q Do you know if safety meetings were
2	20	conducted at the site?
2	21	A I was
2	22	MR. DIAMOND: Do you know, yes or no?
2	23	A No.
2	4	Q Do know what distance you fell in the
2	5	accident?

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		36
	1	JOHN MOORE
	2	MR. DIAMOND: Estimate, if you can.
	3	A About twenty-five to thirty feet.
	4	Q Do you know what you physically landed on?
	5	A The concrete, I think.
	6	Q Did you land on any objects or just flat
	7	concrete?
	8	A I don't know.
	9	Q Do you know if you struck any objects on
	10	the way down before landing?
	11	MR. DIAMOND: Other than what he testified
	12	to before about his arm.
	13	Q Other than what you testified to about the
	14	injuries you sustained to your arm.
	15	A No, I don't know.
	16	Q Did you speak to any eyewitnesses after
	17	the accident about the accident?
	18	A Yes.
	19	Q Who did you speak to?
,	20	A Jim Sullivan.
2	21	Q What was your conversation with Jim
2	22	Sullivan about?

24

25

A

basically said, I'm glad to see that you are not

dead. Is there anything that I can do for you?

He visited me in the hospital and he

	ł		
	1	JOHN MOORE	'
	2	I wasn't interested in particulars. I'm	
	3	not trying to be	ĺ
	4	MR. DIAMOND: You don't have to say that.	
	5	Q Is that the only conversation you had with	
	6	him?	
	7	A Yes.	
	8	Q Did you speak to anybody else that worked	
	9	at that job site about your accident after the	
	10	accident?	
	11	A No.	
	12	Q Do you know of anyone else who had an	
	13	accident at that job site before your accident?	
	14	A No.	
:	15	Q What were you wearing at the time of the	Ambaba.
1	L6	accident?	
1	.7	A A hardhat, gloves construction boots.	i :
1	.8	MR. DIAMOND: What else, what was on	!
1	9	your body?	:
2	0	A A tool belt.	
2	1	Q Did you have any other safety gear on at	
2:	2	the time?	
2:	3	A No.	
24	1	Q Did you have a harness on?	
25	5	A No, I wasn't given a harness.	

1	JOHN MOORE
2	
3	ı
4	Q Was anybody working with a harness at the
5	site that you were aware of?
6	A No.
7	Q Were you attached to any objects by a rope
8.	or a wire?
9	A No.
10	Q Was there a scaffolding near by where you
11	were working at the time of the accident?
12	A No.
13	Q How did get up on top of the cinder block
14	before the accident?
15	A It was ground level.
16	Q How wide was the elevator shaft?
17	A Maybe eight by six.
18	MR. DIAMOND: In feet?
19	THE WITNESS: Yes.
20	Q What is the shaft made of?
21	A Concrete, cinder blocks.
22	Q What was the first thing that you remember
23	when you came to after the accident?
24	A The paramedics standing over me and a guy

I work with, Mike Greco, standing over me.

They

١			39
	1	JOHN MOORE	J
	2	told me not to move.	
İ	3	Q Did you say anything to anyone at that	
	4	time?	
	5	A I said, I guess I took a ten count.	
	6	Q What does that mean?	
	7	A In boxing, when you get knocked out, you	
	8	take a ten count.	
	9	Q What happened after that?	
	10	A They put me on a board and strapped my	
	11	neck down. The paramedics asked me not to move.	
	12	They said they would get me out and I'd be okay.	
	13	Q Can you describe how your body felt at the	9
	14	time that you regained consciousness?	
	15	A Pain.	
	16	Q Can you describe that?	i
	17	A Not to be theatrical, tremendous pain in	
	18	the right side of my body, even in my ribs.	
-	19	Q Are you indicating your right elbow?	
2	20	A Yes.	
2	21	Q Do you mean your right arm?	
2	22	A Yes, my right arm, shoulder. I had a	
2	:3	headache, a little bit of blurred vision. My legs	
2	4	hurt, my right hip, I was afraid.	
2	5	Q Did anybody, before the accident, tell you	

	1	JOHN MOORE)
	2	to work in the particular location where you were	
j	3	working before you fell?	
	4	A Yes, that is where the beam was going in.	
	5	Q Who told you to work at the particular	
	6	place where you were located when the accident	
	7	happened?	
	8	A The foreman.	
	9	Q Who was the foreman?	
	10	A I told you, I don't remember. All I	1
	11	remember is it was a black fellow about my age.	200
	12	Q Was there a supervisor on the job?	2222
	13	A I imagine.	AND TO SERVE
	14	Q Do you know that person's name.	hand the same
	15	A No.	###########
	16	Q What did the foreman say specifically about	1
	17	you working at that location?	Annual of
:	18	A Put the beam in and work together.	
	L9	Q Were you given any further directions or	***
2	20	instructions on how to go about doing that from the	CONTRACTOR OF THE
2	21	foreman?	
2	22	A No, I don't recall.	
2	:3	Q Do you know if A.J. McNulty had a contract	- T - 3
2	4	with any entities to perform work at that location?	A. Casta

A No idea.

1		
1		JOHN MOORE
2	Q	Do you know who was responsible for the
3	contract	s at A.J. McNulty?
4	A	No.
5	Q	After you fell in the accident, have you
6	re-injur	ed any part of your body that was injured in
7	the accid	dent?
8		MR. DIAMOND: Meaning in another accident.
9	А	No. My right elbow tends to swell up from
10	physical	therapy.
11	Q	Where were you taken to from the scene?
12	А	Saint Vincent's Hospital in Staten Island.
13	. Q	How long were you there following the
14	accident?	
15	A	Four days.
16	Q	Did you have medical coverage for the stay
17	at the ho	spital?
18	A	Yes.
19	Q	Did you go straight home after you left the
20	hospital?	
21	A	Yes.
22	Q	Did somebody care for you at home?
23	А	Yes.
24	Q	Who cared for you at home?
25	A	My girlfriend's children.
		·

ĺ	
1	JOHN MOORE
2	Q What does your girlfriend do for a living?
3	A She is a marketing executive and a graphic
4	web designer.
5	Q Was anyone hired to assist you at home
6	following the accident?
7	A No.
8	Q Were you confined to bed for any period of
9	time after you returned home from the hospital?
10	A Yes.
11	Q For how long?
12	A I spent a lot of time in bed and on the
13	couch. The kids would help me around the house and
14	to the dinner table.
15	Q Did you use anything to help you walk
16	during that time?
17	A The walls.
18	Q Any medical apparatus?
19	A No.
20	Q Did you have to wear any kind of medical
21	apparatus following the accident aside from what you
22	already testified to, the cast and the bandages?
23	A I had a sling.
24	Q Was that on the right arm?
25	A Yes.

	1	JOHN MOORE	43
	2	Q For how long?	
	3	A About six weeks.	
	4	Q Anything else?	:
	5	A No.	
	6	Q Did you ever have to wear a back brace or	•
	7	a neck collar?	
	8	A No.	
	9	Q When you regained consciousness, did you	
	10	still have your hardhat on?	
	11	A I don't remember.	
	12	Q How tall are you?	
	13	A About five ten and a half.	
	14	Q How much do you weigh?	
	15	A One hundred ninety pounds.	
	16	Q What was your weight on the day of the	
	17	accident?	
	18	A Two fifteen.	72.776.43.
	19	Q Are there any exercises or sports that you	1
	20	did on a regular basis before the accident that you	
	21	are limited or can't do since the accident?	7
-	22	A Yes.	7
2	23	Q What are they?	72.77.77.700.00
2	24	A I did weight lifting, hiking, basketball,	4000
2	25	running, playing football and playing basketball wit	h

1	JOHN MOORE

- 2 my son.
- 3 Q Where would you weight lift before the
- 4 accident?
- 5 A In the local gym.
- 6 Q Do you have difficultly walking currently?
- 7 A Yes.
- 8 Q Can you describe it?
- 9 A I'm slow. After a while it starts hurting
- 10 my lower back on my right side by the hip over here.
- 11 (Indicating)
- 12 Q The right hip, correct?
- 13 A Yes. My knees bothers me, on the inside of
- 14 my right knee specifically and my ankle hurts.
- 15 Q Which ankle?
- A My right ankle, mostly.
- 17 Q Is that after you walk a certain period of
- 18 time?
- 19 A It depends on the day.
- 20 Q How frequently did you have difficulty
- 21 walking in the past month?
- 22 A Just about everyday.
- 23 Q How far do you walk before you experience
- 24 difficulty?
- 25 A Some days just from the bed to the kitchen,

	1	********	
	1		JOHN MOORE
	2	about s	ixty feet, some days longer.
	3	Q	Do you take painkillers currently for your
	4	pain?	
	5	А	Yes.
	6	Q	What are you on right now?
	7	А	Vicodin and Percocet.
	8	. Q	How long have been taking those?
	9	A	Since I fell.
	10	Q	What dosage are you taking of the Vicodin
	11	currentl	y?
	12	A	I take one to two every six hours.
	13	Q	Did you know what the dosage is?
	14	А	Does seven fifty sound correct?
	15	Q	If you are not sure, just say so.
	16	А	I'm not sure.
	17	Q	What about the Percocet?
	18	A	I'm not sure.
	19	Q	How many pills per day of the Percocet?
	20	A	Three.
	21	Q	Have you had any problems in taking either
	22	of those	medications?
:	23	A	What do you mean?
2	24	Q	Sides effects, any problem at all taking
2	25	them?	

JOHN MOORE

- 2 A I can't drive and I can't pick my kid up
- 3 from school. My girlfriend has to do basically
- 4 everything for me in addition to taking care of her
- 5 own children. We are working together even though
- 6 she's doing most of the work.
- Before I got hurt, I still don't drink, I
- 8 was pretty much a physical fitness buff. I started
- 9 smoking cigarettes again after almost eighteen years
- 10 of not smoking.
- 11 Q Do you have any history of alcohol
- 12 problems?

- 13 A No.
- 14 Q Do you have a history of drug addiction of
- 15 any kind?
- 16 A No.
- 17 Q Have you had any craving for the Vicodin?
- 18 A No.
- 19 Q Have you had any cravings for the
- 20 Percocet?
- 21 A No.
- 22 Q How much are you smoking now?
- 23 A A pack and a half a day.
- 24 Q Prior to this accident, had you ever
- 25 received Workers Compensation?

		(:	
	1		JOHN MOORE
	2	A	Once for a broken finger.
	3	Q	When was that?
	4	А	About three years ago.
	5	Q	Where were you working when you broke your
	6	finger?	\
	7		MR. DIAMOND: I'm going to object to the
	8	form	of the question, it's not related.
	9	Q	Did you injure any other part of your body
	10	in the ac	cident in which you broke your finger?
	11	A	No.
	12	Q	Are you receiving Workers Compensation at
	13	this time	?
	14	A	Disability.
	15	Q	Did you receive Workers Compensation, at
	16	all, in co	onnection with this accident?
	17		MR. DIAMOND: Do you understand, do you
	18	get 1	Workers Comp checks?
-	19	Q	Or did you, after the accident?
2	20	А	Yes, I do now. I think that is what I'm
2	21	getting.	
2	22	Q	Do you know who is paying it?
2	23	A	The State Insurance Fund of New York.
2	24	· Q	Have you been to a hearing for disability
2	5	or Workers	Compensation benefits?

	j			
	1		JOHN MOORE	48
	2	А	No.	
	3	Q	Are any planned or scheduled?	
	4	А	No.	
	5	Q	What are you receiving currently?	
	6	А	Four hundred dollars a week.	
	7	Q	Is that the total?	
٠	8	A	Yes, and one hundred fifty from my local.	
	9	Q	In total, you are receiving five hundred	E 100 St. C.
	10	fifty per	week, correct?	,
	11	А	Yes.	
	12	Q	What were your earnings before this	27.5
	13	accident?		
	14	A	Net or gross?	- A - A - A - A - A - A - A - A - A - A
	15	Q	Either.	300000
	16		MR. DIAMOND: What was the gross?	
	17	А	About thirteen hundred a week.	
	18	Q	What did you net?	- Company de
	19	A	About eight hundred.	de
:	20	Q	At the time of the accident, were you	
2	21	enrolled i	n any school or taking any courses?	
2	22	A	No.	Table 1
2	23	Q	Did you have any other position of	
2	24	employment	or volunteer positions?	

Α

No.

total difference in my mass.

- 1 JOHN MOORE 2 I'll ask that you retain that, don't 3 destroy it until this matter is resolved. 4 Α It was all natural too. 5 MR. DIAMOND: We will retain it. 6 Do you have outstanding medical expenses 7 because of this accident? 8 Α Doctors visits. Q Were they paid for by an insurance 10 company? 11 A Yes. 12 Do you have any expenses, medical related, 13 because of the accident? 14 MR. DIAMOND: Anything out of pocket that 15 hasn't been covered? Α No.
- 16
- 17 Any other expenses aside from medical
- 18 because of the accident?
- 19 MR. DIAMOND: Do you understand? Anything
- 20 that you had to pay for that you would not
- 21 have, had you not been injured?
- 22 Α Not that I can think of.
- 23 Where was Bob standing at the time of the
- 24 accident?
- 25 Α Next to me.

	ł		
	1	JOHN MOORE	51
	2	Q Was he also standing on the cinder block?	
	3	A I don't know.	
	4	Q Was anything resting on the cinder block	
	5	you were standing on aside from you and possibly	
	6	Bob?	
	7	A No.	
	8	Q Do you know if the cinder block that you	
	9	were standing on was wet or damp?	aywy .
	10	A No.	
	11	Q Do you know how long it had been there in	
	12	that position before your accident?	***************************************
	13	A No.	
	14	Q Do you know who placed it there?	1
	15	A I guess	
•	16	MR. DIAMOND: Note my objection, you can	And And
Ī	L 7	answer. Asked and answered before.	
1	18	MS. McARDLE: It was	X.
1	.9	MR. DIAMOND: He said who built the thing.	
2	:0	Q Did the general contractor put the cinder	
2	1	block there that you were standing on?	1
2	2	A They were responsible for erecting the	
2	3	elevator shaft and I assume that they did that.	
2	4	Q Did you receive any directions or	
2	5	instructions from Skanska on the day of the accident	**
		•	1

25

the accident?

No.

Α

	1	JOHN MOORE
	2	Q Do you wear glasses or contacts?
	3	A No.
	4	Q When is last time that you had your eyes
	5	examined?
	6	A I can't remember.
	7	Q Did you consume any drugs, alcohol or
	8	intoxicating substances within twenty-four hours of
	9	the accident happening?
	10	A Absolutely not.
	11	Q On the days prior to the accident that you
	12	worked at that job site, had you ever stood on that
	13	particular cinder block before?
	14	A No.
١.	15	Q Did you see anybody else standing on it
-	16	before you stood on it and your accident happened?
1	17	A No.
1	.8	Q Aside from you and Bob, who else was
1	.9	working to put the beam in place at the time?
2	0	A Mike Greco and the other guy. I don't
2	1	remember his name.
2	2	Q Were four people in total working to put
2	3	the beam in place at the time?
2	4	A Yes.
25	5	Q Does that include the crane operator?

24

25

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Α

Where was the other connector located when

Is Mike a connector?

He was on that job.

	1		55
	1	JOHN MOORE	<i>33</i>
i	2	your accident happened?	
	3	A Up on the beam.	
	4	Q Was Mike on the cinder block that you were	9
	5	on when the accident happened?	
	6	A No.	
	7	Q Was Mike on the beam?	
	8	A Yes.	
	9	Q Did Mike know where you were located when	
	10	your accident happened?	
	11	MR. DIAMOND: Objection, don't answer.	21 22000
	12	Q Do you know if Mike was where you were	***************************************
	13	when the accident happened?	1
	14	MR. DIAMOND: Objection, don't answer.	A TANKA
	15	Just rephrase.	
-	16	Q Within the period of time that you were	·
1	L7	standing on the cinder block before you fell, did	To make the second
1	8	you have a conversation with Mike?	3000
1	.9	A No.	- No.
2	0	Q During the time that you were on the	**************************************
2	1	cinder block before you fell that day, did you have	27.7
2	2	a conversation with the other connector?	To Assess
2	3	A I really don't remember.	
24	4	Q Did you fill out a written report for your	
25	5	employer about the accident?	New Street, Street, Street, Street, Street, Street, Street, Street, Street, Street, Street, Street, Street, St

	į
JOHN MOORE	

- 2 A I was in the hospital.
- 3 Q What treatment did you receive in the
- 4 hospital?

- 5 A Surgery on my right elbow. They took
- 6 x-rays of my head and I was in the trauma unit for a
- 7 couple of hours.
- Q Did you learn the results the x-rays to
- 9 your head?
- 10 A A severe concussion.
- 11 Q Do you plan on returning to work in the
- 12 future?
- MR. DIAMOND: Note my objection to the
- form. You can answer over my objection.
- 15 A That is the only thing that I know how to
- 16 do.
- 17 Q Have you spoken to a doctor about whether
- 18 you will be physically able to return to work in the
- 19 future?
- 20 A He said there is a possibility, but being
- 21 that I have to use both of my arms, I might not have
- 22 full effect in my right arm.
- 23 Q Aside from the medical providers and the
- 24 facilities that you have testified to already, did
- 25 you treat anywhere else in connection with the

516-485-2222

before your accident?

1		
1	JOHN MOORE	

- 2 A No.
- 3 Q Do you know if anyone said anything to the
- 4 foreman at A.J. McNulty about the condition of the
- 5 elevator shaft before your accident happened?
- 6 A I don't know.
- 7 Q Have you ever received welfare or public
- 8 assistance?
- 9 A No.
- 10 Q Have you ever received SSI?
- 11 A No.
- 12 Q Have you ever received Social Security
- 13 disability?
- 14 A No.
- 15 Q Have you received Section Eight or
- 16 subsidized housing?
- 17 A No.
- 18 Q Have you ever been convicted of a crime?
- 19 A No.
- 20 Q Have you been known by any other name aside
- 21 from John Moore.
- 22 A No.
- Q Does the City of New York hold any
- 24 judgments or liens against you for any reason, such
- 25 as parking violations or fines?

1	JOHN MOORE	59
2	A Not that I know of.	
3	Q Do you hold any professional licenses?	
4	A Journeyman Iron Worker.	
5	MS. McARDLE: Counsel, are you pursuing	
6	this matter against any private parties?	
7	MR. DIAMOND: We are not sure yet.	
8	MS. McARDLE: Are you willing to have your	
9	client examined by a doctor for the City?	
10	MR. DIAMOND: Yes.	
11	Q Mr Moore, have you ever worked for the City	
12	of New York?	
13	A No.	
14	Q Does your ex-wife have custodial rights of	i
15	your son?	
16	A My ten year old?	
17	Q Yes.	
18	A It's not her child.	
19	Q Does the mother of your ten year old child	
20	have custodial rights over your son?	
21	A No.	ŀ
22	Q Has your relationship with your family	
23	members and significant other been affected by the	
24	incident?	
 25	A Yes.	

JOHN MOORE

- 2 Q How, aside from what you have testified to
- 3 already?

- 4 A What did I testify to?
- 5 MR. DIAMOND: Just explain how, if you
- 6 want to, how have relationships with other
- people been affected by this?
- Q If you repeat yourself, it's not a problem.
- 9 A I can't take my son to the park. I can't
- 10 play basketball with him. I can't wrestle around
- 11 the house with him. My girlfriend's oldest son, I
- 12 used play basketball and go hiking with him sometimes.
- 13 I can't do any of those things.
- 14 Q Okay.
- 15 A I'm not very attentive to my girlfriend as
- 16 I used to be, whether it be physically, mentally or
- 17 emotionally. I have become very self-absorbed. I
- 18 don't know if that is viable or not.
- 19 Q Is there anything else that you can think
- 20 of?
- 21 A No.
- 22 Q Is there a wedding date planned at this
- 23 time?
- 24 A No.
- Q Have you gone for any kind of therapy or

	1		
	1	JOHN MOORE	
	2	counseling in connection with the accident?	
	3	A No, but the neurologist suggested that I	
	4	might have some problem mentally with the trauma to	
	5	my head. He hasn't elaborated any further than	
	6	that.	
	7	Q Are you the sole provider of your ten year	
	8	old son?	
	9	A Yes.	
	10	Q Do you have any other dependants?	
	,11	A No.	
	12	Q Have you ever sued the City of New York	1
	13	before, including on anyone's behalf, such as your	
	14	children?	
	15	A No.	77.07.
	16	Q Did you have any private insurance at the	
	17	time of the accident?	
	18	A Through my union.	· · · · · · · · · · · · · · · · · · ·
	19	Q What kind of insurance?	
	20	A I have Empire Blue Cross for	:
	21	hospitalization, Magna Care for doctor office visits	-
	22	and for dental.	i
2	23	Q Did you have any private disability	
2	24	insurance?	
2	25	A No.	
		1:	

1		
1	JOHN MOORE	2
2	Q Do you have any photographs showing how	
3	your injuries appeared right after the accident?	
4	A No, I don't.	
5	MS. McARDLE: Counsel, will you provide	
6	medical authorizations here today?	The state of the s
7	MR. DIAMOND: We won't provide them here	200
8	today, but we will respond to the request.	717
9	MS. McARDLE: Please, include the claim	**********
10	number on any responses that you make and	
11	forward them directly to the Comptroller's	**************************************
12	Office.	and the second second
13	(Continued on the next page to include the	
14	jurat and signature line.)	Mary
15		
16		
17		
18		
19		The second secon
20		
21		
22		
23		And Calendary
24		
25		
		1

	1		
	1	JOHN MOORE	63
	2	MR. DIAMOND: Okay.	
	3	MS. McARDLE: Thank you, nothing further.	
	4	(Whereupon, the examination of	
	5	this witness was concluded at 5:00 p.m.)	
	6		
	7	I have read the foregoing record of my	
	8	testimony taken at the time and place noted in the	
	9	heading hereof and I do hereby acknowledge it to be	
	10	a true and correct transcript of the same.	
	11		
	12		
	13		
:	14	JOHN MOORE	332
]	L5		
1	6	Subscribed and sworn to	
1	.7	before me on thisday	7
1	8	of, 2004.	392.45
1	9		
2	0 .		±.60
2	1	NOTARY PUBLIC	. 441
22	2		
23	3	•	
24			. per yar.
25	5		
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	2	CERTIFICATION	5
	3		
	4	I, Joseph J. Pontillo, a Notary Public of	
	5	the State of New York do hereby certify:	
	6	That the testimony in the within hearing	
	7	was held before me at the aforesaid time and place.	
	8	That said witness was duly sworn before the	
	9	commencement of the testimony, and that the testimony	
	10	was taken stenographically by me then transcribed under	
	11	my supervision, and that the within transcript is a	
	12	true record of the testimony of said witness.	
	13	I further certify that I am not related to	
	14	any of the parties to this action by blood or marriage,	
	15	that I am not interested directly or indirectly in the	
	16	matter in controversy, nor am I in the employ of any of	
	17	the counsel.	
	18		
•	19	IN WITNESS HEREOF, I have hereunto set my	
2	20	hand this	
2	21		
2	22	(Joseph () Portelle	
2	:3	JOSEPH J. PONTILLO	
2	4		
2	5		
		•	
			• '

Renewal of Number						n.	Harris Maria	
BCS0005680		te					licy Number	
		SCOTTSDAT	E INSTIDAN	CE COMP	ANIVO	DC	S0008003	
l	SCOTTSDALE INSURANCE COMPANY®							
	Home Office:							
	One Nationwide Plaza - Columbus, Ohio 43215 Administrative Office:							
	Administrative Office: 8877 North Gainey Center Drive, Scottsdale, Arizona 85258							
		ASIC	OCK COMPAI	VY				
COMMON POLICY DEC	LAHATIONS			1				
Item 1. Named Insured	and Mailing A	ddress						
ARENA CONSTRUCT	ION COMPA	NY,					:	
INC. 45 KNOLLWOOD RD								
ELMSFORD NY 1052	23			•				
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Agent Name and Address			٠.					
CRC INSURANCE SE 80 BROAD ST 25TH NEW YORK NY 1000	RVICES I	NC .						
NEW YORK NY 1000	4	•						
			Agent No	o. 31729		Program No.:	NONE	
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Item 2. Policy Period	From:	05-03-04	Ť	25 22	`F	T 2	Vaara	
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		Standard Time at your m		05-03-0	DDU	Term: 1	Year	
				05-03-0	BRO	KERAG		
	12:01 A.M.,	Standard Time at your m	alling address	05-03-0	BRO			
Business Description:	12:01 AM., S	Standard Time at your m	ailing address		BRO	KERAGI SUALTY	2	
Business Description: In return for the payment (12:01 A.M., S GENER of the premiur	Standard Time at your m AL CONTRACTO n, and subject to all	ailing address R the terms of t	his policy, w	BRO CA	KERAGI SUALTY with you to prov	de the	
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Business Description: In return for the payment of insurance as stated in this Where no premium is show Coverage Commercial General Liability Commercial Property Coverage Commercial Inland Marine Commercial Auto (Business	GENER of the premiur policy. This wn, there is no ge Part(s) ty Coverage Ferage Part ge Part Coverage Part s Auto or Trui	AL CONTRACTO m, and subject to all policy consists of the coverage. This pre-	R the terms of the following common terms of the terms of the following common terms of the foll	his policy, w overage parts e subject to a	BRO CA re agree w	SUALTY with you to prove a premium is not.	lde the indicated.	

THIS COMMON POLICY DECLARATION AND THE SUPPLEMENTAL DECLARATION(S), TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART(S), COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, COMPLETE THE ABOVE NUMBERED POLICY,

Form(s) and Endorsement(s) made a part of this policy at time of issue:

See Schedule of Forms and Endorsements

OPS-D-1 (12-00)

COMPANY ISSUED

Home Office Copy

POLICY

MCH-Fri May 21 10:08:05 2004

SCOTTSDALE INSURANCE COMPANY®

COMMERCIAL GENERAL LIABILITY COVERAGE PART SUPPLEMENTAL DECLARATIONS

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named Insured ARENA CONSTRUCTION COMPANY,

item 1. Limits of Insurance							
Coverage	Limit of Liability						
Aggregate Limits of Liability	s1,000,000	Products/Completed Operations Aggregate					
	\$ 2,000,000	General Aggregate (other than Products/Completed Operations					
Coverage A - Bodily Injury and Property Damage Liability	\$1,000,000	any one occurrence subject to the Products/Completed Operations and General Aggregate Limits of Liability					
Damage To Premises Rented To You	\$100,000	any one premises subject to the Coverage A occurrence and the General Aggregate Limits of Liability					
Coverage B - Personal and Advertising Injury Liability	\$ 1,000,000	any one person or organization subject to the General Aggregate Limits of Liability					
Coverage C - Medical Payments	\$ 5,000	any one person subject to the Coverage A occurrence and the General Aggregate Limits of Liability					
Item 2. Form of Business and Location of Premises							
form of Business: GENERAL CONTRACTOR							
☐ Individual ☐ Partnership ☐ Joint Venture ☐ Trust ☐ Limited Liability Company							
I Organization including a corporation (other than Partnership, Joint Venture or Limited Liability Company)							
ocation of All Premises You Own, Rent or Occupy:							
See Schedule of Locations							
em 3. Forms and Endorsements							
Form(s) and Endorsement(s) made a part of this policy at time of issue:							
orm(s) and Endorsement(s) made a part of this poli							
orm(s) and Endorsement(s) made a part of this poli See Schedule of Forms and Endorsements	.,						
See Schedule of Forms and Endorsements		s T					
See Schedule of Forms and Endorsements em 4. Premiums		\$ \$					

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

SCOTTSDALE INSURANCE COMPANY®

COMMERCIAL GENERAL LIABILITY COVERAGE PART EXTENSION OF SUPPLEMENTAL DECLARATIONS

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named insured ARENA CONSTRUCTION COMPANY,

Agent No. 31729

Prem. No. Bldg. No.	Class Code 91341	Exposure \$ 100,000	Basis Payroll/Nearest th	OUSAND		
Class Description:			Premises/Operations			
CARPENTRY - INTER	COR	Rate	Premium			
		Products/Comp Operations				
		•	Rate Premium			
Prem. No. Bldg. No.	Class Code 91580	Exposure \$ 100,000	Basis Payroll/Nearest The	DUSAND		
Class Description:			Premises/O	perations		
CONTRACTORS - EXEC EXECUTIVE SUPERINT	ENDENTS (PR	Rate	Premium			
OPERATIONS ARE SUB- AGGREGATE LIMIT)	JECT TO THE	general.				
			Products/Comp	Operations		
			Rate	Premium		
Prem. No. Bldg. No.	Class Code 91585	Exposure \$ 4,200,000	Basis TOTAL COST/NEAREST	THOUSAND		
Class Description:			Premises/Operations			
CONTRACTORS - SUBCO CONNECTION WITH CON			Rate	Premlum		
REPAIR OR ERECTION						
		Products/Comp Operations				
		Rate	Premium			
Prem. No. Bldg. No.	Class Code 49950	Exposure	Basis			
Class Description:		Premises/Operations				
ADDITIONAL INTEREST CLANKET GLS-210S W/G		Rate	Premium			
		Products/Comp Operations				
			Rate	Premium		

J & SCOTTSDALE INSURANCE COMPAN	SCOTTSDALE INSURANCE C	OMPANY
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COMMERCIAL GENERAL LIABILITY COVERAGE PART EXTENSION OF SUPPLEMENTAL DECLARATIONS

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named Insured ARENA CONSTRUCTION COMPANY,

Agent No. 31729

Prem. No. Bidg. No.	Class Code 49950	Exposure	Basis	
Class Description:			Premises/O	perations
ADDITIONAL INTERES	ST:		Rate	Premlum
		-		
			Products/Comp	Operations
			Rate	Premium
Prem. No. Bldg. No.	Class Code 73444	Exposure	Basis	
Class Description:			Premises/Op	perations
EMPLOYEE BENEFITS			Rate	Premium
			Products/Comp	Operations
			Rate	Premium
				٠.
Prem. No. Bldg. No.	Class Code	Exposure	Basis	
Class Description:			Premises/Op	erations
			Rate	Premium
			Products/Comp (Operations
			Rate	Premium
Prem. No. Bldg. No.	Class Code	Exposure	Basis	
Class Description:			Premises/Ope	erations
• •		-	Rate	Premium
		}	Products/Comp C	perations
		ļ	Rate	Premium

CLS-SP-1L (10-93)

SCHEDULE OF FORMS AND ENDORSEMENTS

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named Insured ARENA CONSTRUCTION COMPANY,

Agent No. 31729

COMMON POLICY FOR		
OPS-D-1 UTS-SP-2L UTS-SP-3 IL 00 17 IL 00 23 UTS-74G UTS-9G UTS-COVPG	12-00 12-95 08-96 11-98 04-98 08-95 05-96 10-03	COMMON POLICY DECLARATIONS SCHEDULE OF FORMS & ENDORSEMENTS SCHEDULE OF LOCATIONS COMMON POLICY CONDITIONS NUCLEAR ENERGY LIABILITY EXCLUSION ENDT. PUNITIVE OR EXEMPLARY DAMAGE EXCLUSION SERVICE OF SUIT CLAUSE COVER PAGE
CLS-SD-1L CLS-SP-1L CG 00 01 CG 00 62 CG 21 47 CG 21 55 CG 21 67 CG 21 75 CG 22 79 CG 22 79 CG 25 03 CG 25 04 GLS-1365 GLS-1375 GLS-1375 GLS-1375 GLS-1525 GLS-1525 GLS-1695 GLS-2105 GLS-305 GLS-2105 GLS-2505 GLS-2505 GLS-2505 GLS-2505 GLS-2305	FORMS AND E 08-01 10-93 10-91 12-98 01-96 09-99 04-02 12-98 10-93 03-97 10-95 10-95 10-99 12-97 004-99 12-99 12-91 003-97 003-97 003-97 003-97 003-97	COMMERCIAL LIABILITY COVERAGE PART DEC GENERAL LIABILITY COVERAGE PART-EXT. COMMERCIAL GENERAL LIABILITY COV FORM WAR LIABILITY EXCLUSION EMPLOYMENT-RELATED PRACTICES EXCLUSION EXCL - DESIGNATED OPERATIONS TOTAL POLLUTION EXCL. WITH HOSTILE FIRE FUNGI OR BACTERIA EXCLUSION EXCL CERTIF ACTS OF TERRORISM & OTHR ACT EXCL-CONTRACTORS-PROF LIAB WAIVER-TRANS RIGHTS AGAINST OTHERS TO US DESIGNATED CONSTRUCTION PROJECTS GENERAL DESIGNATED LOCATIONS GENERAL AGGREGATE NOTICE OF OCCURRENCE KNOWLEDGE OF OCCURRENCE LIABILITY DEDUCTIBLE (PER OCC/OFF) AMENDMENT TO OTHER INS CONDITION EMPLOYEE BENEFIT LIABILITY ADDTL OWNERS-CONTRACTORS-OPTIONAL CONTRACTORS SPECIAL CONDITION LEAD CONTAMINATION EXCLUSION AMENDMENT OF CONDITIONS ASBESTOS EXCLUSION RESIDENTIAL EXCLUSION CONTRACTUAL LIABILITY - RAILROADS MIN AND ADV PREM/MIN EARNED CANCEL PREM SUBSIDENCE EXCL

END	ORS	EM	ENT
NO.			

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS SPECIAL CONDITIONS

This endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following condition is added to SECTION IV—COMMERCIAL GENERAL LIABILITY CONDITIONS section of the policy:

CONTRACTORS SPECIAL CONDITIONS

You will obtain certificates of insurance from all independent contractors providing evidence of :

- 1. Limits of Insurance equal to or greater than the limits provided by this policy; and
- 2. Coverage equal to or greater than the coverages provided by this policy.

Failure to comply with this condition does not alter the coverage provided by this policy. However, should you fail to comply a premium charge will be made. This premium charge will be based on the "total cost" of all work sublet.

"Total cost" means the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work and all fees, bonuses or commissions paid.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 03 03 97

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated	Construction	Projects:
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(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
 - A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 - 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of "bodily injury" or "property damage" included in the "productscompleted operations hazard", and for medical expenses under COVERAGE C regardless of the number of:
 - a. Insureds:
 - b. Claims made or "suits" brought; or
 - **c.** Persons or organizations making claims or bringing "suits".
- 3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.

- 4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
 - Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 - Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Limits Of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated.

SCHEDULE OF LOCATIONS

Policy No. BCS0008003

Effective Date: 05-03-04

12:01 A.M., Standard Time

Named Insured ARENA CONSTRUCTION COMPANY,

Agent No. :31729

Prem. No.	Bldg. No.	Designated Premises (Address, City, State Zip Code) Occupancy
001		45 KNOLLWOOD RD ELMSFORD, NY 10523-0000
002		253 UTICE AVE BROOKLYN, NY 11213-0000
003		29-42 NORTHERN BLVD LONG ISLAND CITY, NY 11101-0000
004		230 WILLOW ST YONKERS, NY 10701-0000

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ENDORSEMENT

Attached to and forming a part of Policy No. BCS0008003

Endorsement Effective Date 05-03-04
12:01 A.M., Standard Time

Named insured ARENA CONSTRUCTION COMPANY

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY PLEASE READ IT CAREFULLY.

PUNITIVE OR EXEMPLARY DAMAGE EXCLUSION

In consideration of the premium charged, it is agreed that this policy does not apply to a claim of or indemnification for punitive or exemplary damages.

Punitive or exemplary damages also include any damages awarded pursuant to statute in the form of double, treble or other multiple damages in excess of compensatory damages.

If suit is brought against any insured for a claim falling within coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then the Company will afford a defense to such action; however, the Company will have no obligation to pay for any costs, interest or damages attributable to punitive or exemplary damages.

AUTHORIZED REPRESENTATIVE

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ENDORSEMENT NO.____

Attached to and forming a part of Policy No. BCS0008003
Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04 12:01 A.M., Standard Time Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT CLAUSE

It is agreed that in the event of the fallure of the Company to pay any amount claimed to be due under this policy, the Company at the request of the Insured (or reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give the Court jurisdiction. All matters which arise will be determined in accordance with the law and practice of the Court. In a suit instituted against any one of them under this contract, the Company agrees to abide by the final decision of the Court or of any Appellate Court in the event of an appeal.

Pursuant to any statute of any state, territory or district of the United States of America which makes a provision, the Company will designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured (or reinsured) or any beneficiary arising out of this contract of Insurance (or reinsurance).

The officer named below is authorized and directed to accept service of process on behalf of the Company:

SUPERINTENDENT OF INSURANCE

EMPIRE STATE PLAZA, AGENCY BUILDING ONE

ALBANY, NY 12257

Having accepted service of process on behalf of the Company, the officer is authorized to mail the process or a true copy to:

AUTH	IORIZ	ED R	FPRE	SENTA	TIME

COMMERCIAL GENERAL LIABILITY
CG 21 54 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description and Location of Operation(s):

ALL "WRAP-UP" PROJECTS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the

prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part;
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.

COMMERCIAL GENERAL LIABILITY
CG 24 04 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

ANY PERSON OR ORGANIZATION THAT THE INSURED HAS AGREED AND/OR IS REQUIRED BY CONTRACT TO WAIVE RIGHTS OF RECOVERY AGAINST, PER SCHEDULE ON FILE WITH COMPANY

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

Home Office Copy

COMMERCIAL GENERAL LIABILITY
CG 25 03 03 97

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Projects:
ALL PROJECTS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
 - 1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 - 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under COVERAGE C regardless of the number of:
 - a. Insureds:
 - b. Claims made or "suits" brought; or
 - Persons or organizations making claims or bringing "suits".
- 3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other

- designated construction project shown in the Schedule above.
- 4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
 - 1. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 - 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

CG 25 03 03 97

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Page 1 of 2

- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Limits Of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated.

Home Office Copy

COMMERCIAL GENERAL LIABILITY
CG 25 04 03 97

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(s):	
ALL LOCATIONS	

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. For all sums which the insured becomes legally obligated to pay as damages caused by -occurrences- under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to operations at a single designated -location- shown in the Schedule above:
 - A separate Designated Location General Aggregate Limit applies to each designated -location-, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 - 2. The Designated Location General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of -bodily injury- or -property damage- included in the -products-completed operations hazard-, and for medical expenses under COVERAGE C regardless of the number of:
 - a. Insureds:

- b. Claims made or -suits- brought; or
- Persons or organizations making claims or bringing -suits-.
- 3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Designated Location General Aggregate Limit for that designated -location-. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated -locationshown in the Schedule above.
- 4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Location General Aggregate Limit.

- B. For all sums which the insured becomes legally obligated to pay as damages caused by -occurrences- under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which cannot be attributed only to operations at a single designated -location- shown in the Schedule above:
 - Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
- Such payments shall not reduce any Designated Location General Aggregate Limit.
- C. When coverage for liability arising out of the -products-completed operations hazard- is provided, any payments for damages because of -bodily Injury- or -property damage- included in the -products-completed operations hazard- will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Location General Aggregate Limit.
- D. For the purposes of this endorsement, the Definitions Section is amended by the addition of the following definition:
 - -Location- means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- E. The provisions of Limits Of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated.

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NO.

Attached to and forming a part of Policy No. BCS0008003 Named Insured ARENA CONSTRUCTION COMPANY, Endorsement Effective Date 05-03-04 12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF OCCURRENCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to Paragraph 2. Duties in the Event of Occurrence, Offense, Claim or Suit of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

An "occurrence," or offense originally reported to your workers compensation carrier may later develop into a claim which may be covered by this policy. If you notify us as soon as practicable after you become aware that the "occurrence" or offense may result in a claim against this policy, you will not be deemed in violation of the reporting requirements of this condition.

AUTHORIZED REPRESENTATIVE

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ENDORSEMENT

NO._

Attached to and forming a part of Policy No. BCS0008003
Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04 12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

KNOWLEDGE OF OCCURRENCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to Paragraph 2. Duties in the Event of Occurrence, Offense, Claim or Suit of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

Knowledge of an "occurrence," offense, claim, or "sult" by the agent, servant or employee of any insured will not in itself constitute knowledge by the Named Insured unless an executive officer of the Named Insured's organization received such notice from its agent, servant or employee.

AUTHORIZED REPRESENTATIVE

DATE

GLS-137s (10-95)

Home Office Copy



ENDORSEMENT

12:01 A.M., Standard Time

Attached to and forming a part of

Policy No. BCS0008003

Named insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY LIABILITY DEDUCTIBLE ENDORSEMENT (Per Occurrence or Offense)

This endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Coverage		Amount and Bas	sis of Deductible
Bodily Injury Liability	\$	5000	per occurrence
Property Damage Liability	\$	5000	per occurrence
Personal and Advertising Injury Liability (Personal Inj-	\$	5000	per offense
ury and Advertising Injury)	i	*	

APPLICATION OF ENDORSEMENT

Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury," "property damage," and "personal and advertising injury," ("personal injury" and "advertising injury") however caused:

NO LIMITATION

Our obligation under the Bodily Injury Liability, Property Damage Liability, Personal and Advertising Injury Liability ("Personal Injury" and "Advertising Injury") Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as.

- applicable to such coverages, and the Limits of Insurance applicable to Each Occurrence or offense for such coverages will be reduced by the amount of such deductible. Aggregate Limits for such coverages shall not be reduced by the application of such deductible amount.
- 2. The deductible amounts apply to damages and all legal and loss adjustment expenses.
- 3. The deductible amounts stated in the Schedule above apply:
 - a. Under Bodily Injury Liability Coverage, to all damages because of bodily injury;
 - b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
 - Under Personal and Advertising Liability ("Personal Injury" and "Advertising Injury") Coverage, to all damages because of "personal injury" or "advertising injury"

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Page 1 of 2 Home Office Copy

- as the result of any one "occurrence" or offense, regardless of the number of persons or organizations who sustain damages because of that "occurrence" or offense.
- 4. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those damages and your duties in the event of an "occurrence," offense, claim or "suit," apply.
- irrespective of the application of the deductible amount.
- 5. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us..

AUTHORIZED REPRESENTATIVE

DATE

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ENDORSEMENT NO.

Attached to and forming a part of Policy No. BCS0008003 Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04 12:01 A.M., Standard Time Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT TO OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Condition 4. Other Insurance of SECTION IV -**COMMERCIAL GENERAL LIABILITY CONDITIONS is** deleted in its entirety and is replaced by the following:

4. Other Insurance

a. Primary Insurance

This insurance is primary except when b. below applies.

b. Excess Insurance

This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk. Installation Risk or similar coverage for "your work";
- That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner:
- If the loss arises out of the maintenance or use of aircraft, "auto" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section !); or

That is valid and collectible insurance available to you under any other policy.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only the amount of the loss, if any, that exceeds the sum of:

- The total amount that all such other insurance (1) would pay for the loss in the absence of this insurance; and
- (2)The total of all deductible and self-insured amounts under all other insurance.

If a loss occurs involving two or more policies, each of which states that its insurance will be excess, then our policy will contribute on a pro rata basis.

AUTHORIZED REPRESENTATIVE

DATE

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NO.____

ENDORSEMENT

Attached to and forming a part of Policy No. BCS0008003
Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04 12:01 A.M., Standard Time Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE BENEFIT LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Coverage	Limits of Insurance	Premium
Employee Benefits Programs	\$ <u>1,000,000</u> Each Employee	\$_
	\$ 1,000,000 Aggregate	

COVERAGE

1. Insuring Agreement

We will pay under this endorsement those sums that the "insured" becomes legally obligated to pay as damages because of any negligent act, error or omission of the "insured," or of any other person for whose acts the "insured" is legally liable. The negligent act, error or omission must be committed in the "administration" of your "employee benefit program" during the policy period. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS of the COMMERCIAL GENERAL LIABILITY COVERAGE FORM, CG 00 01.

The negligent act, error or omission must take place in the "coverage territory." We will have the right and duty to defend any "suit" seeking those damages. But:

- The amount we will pay for damages is limited as described in the LIMITS OF INSURANCE section of this endorsement;
- b. We may at our discretion, investigate any report of a negligent act, error or omission and settle any claim or "suit" that may result; and

 Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

2. Exclusions

Insurance under this endorsement does not apply to:

- Loss arising out of any dishonest, fraudulent, criminal or malicious act or omission, committed by any "insured";
- "Bodily injury," "property damage," "personal injury" or "advertising injury";
- Loss arising out of failure of performance of contract by any insurer;
- d. Loss arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program";
- e. Any claim or "suit" based upon:
 - failure of any investment to perform as represented by any "insured";
 - (2) advice given to any person to participate or not to participate in any plan included in the "employee benefit program":

Page 1 of 3

- f. Loss arising out of your failure to comply with the mandatory provisions of any law concerning workers compensation, unemployment insurance, social security, disability benefits or any similar law; or
- g. Loss for which the "insured" is liable because of liability imposed on a fiduciary by the Employee Retirement Security Act of 1974, as now or hereafter amended.

WHO IS AN INSURED

With respect to this endorsement only:

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are "insureds," but only with respect to the conduct of a business of which you are the sole owner.
 - A partnership or joint venture, you are an "insured." Your members, your partners, and their spouses are also "insureds," but only with respect to the conduct of your business.
 - c. A limited liability company, you are an "insured." Your members are also "insureds," but only with respect to the conduct of your business. Your managers are "insureds," but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture, or limited liability company, you are an "insured." Your directors and stockholders are also "insureds," but only with respect to their liability as your directors or stockholders.
- 2. Each of the following is also an "insured":
 - Your partners, executive officers, members, managers, and employees who are authorized to administer your "employee benefit program."
 - Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this endorsement.
- Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if

there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period whichever is earlier; and
- Coverage under this provision does not apply to any negligent act, error or omission that occurred before you acquired or formed the organization.

No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

LIMITS OF INSURANCE

- The Limits of Insurance shown in the Schedule of this endorsement and the rules below fix the most we will pay regardless of the number of:
 - a. "Insureds";
 - b. Claims made or "suits" brought;
 - Persons or organizations making claims or bringing "suits";
 - d. Acts, errors or omissions which result in loss; or
 - e. Plans included in your "employee benefit program."
- The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions committed in the "administration" of your "employee benefit program."
- 3. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one employee, including the employee's dependents and beneficiaries, because of acts, errors or omissions committed in the "administration" of your "employee benefit program."

The Limits of Insurance shown in the Schedule apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding

period for purposes of determining the Limits of Insurance.

DEFINITIONS

The following DEFINITIONS are added to the policy:

- "Administration" means any of the following acts that you do or authorize a person to do:
 - Counseling employees, including their dependents and beneficiaries, with respect to the "employee benefit program"; or
 - Handling records in connection with the "employee benefit program"; or
 - c. Effecting or terminating any employee's participation in a plan included in the "employee benefit program."
- "Coverage territory" means the United States of America (including its territories and possessions), Puerto Rico and Canada.
- "Employee benefit program" means the following plans:
 - a. Group life insurance, group accident or health insurance, "profit sharing plans," pension plans, "stock subscription plans," vacation and savings plans, provided that no one other than an employee may subscribe to such insurance or plans; or
 - Unemployment insurance, social security benefits, workers compensation and disability benefits; or
 - c. Any other similar plan designated in the Schedule.
- "Insured" means any person or organization qualifying as such under WHO IS AN INSURED section of this endorsement.
- "Profit sharing plans" means only such plans that are equally available to all full time employees.

"Stock subscription plans" means only such plans that are equally available to all full time employees.

For the purposes of this endorsement, the definition of "suit" contained in the **DEFINITIONS** section of the policy is deleted in its entirety and is replaced with the following:

"Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

- An arbitration proceeding alleging such damages to which you must submit or submit with our consent; or
- Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

CONDITIONS

It is agreed that item 2. Duties In The Event Of Occurrence Offense, Claim Or Suit paragraphs a. and b. of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS are deleted for purposes of this endorsement and replaced with the following:

- Duties In The Event Of Act, Error Or Omission, Claim Or Suit.
 - a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. Notice should include:
 - (1) What the act, error or omission was and when it occurred; and
 - (2) The names and addresses of any employees who may suffer damages as a result of the act, error or omission.
 - b. If a claim is received by any "insured" you must:
 - immediately record the specifics of the claim and the date received; and
 - (2) Notify us as soon as practicable. You must see to it that we receive written notice of the claim as soon as practicable.

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ENDORSEMENT

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SCOTTSDALE INSURANCE COMPANY®

Endorsement Effective Date 05-03-04
12:01 A.M., Standard Time

Agent No. 31729

Attached to and forming a part of Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEAD CONTAMINATION EXCLUSION

This endorsement modifies insurance provided under:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This endorsement excludes "occurrences" at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured; or from the operations of the insured, which result in:

- a. "Bodily Injury" arising out of the ingestion, inhalation or absorption of lead in any form;
- b. "Property Damage" arising from any form of lead;
- c. "Personal Injury" arising from any form of lead;
- d. "Advertising injury" arising from any form of lead;

- e. Medical Payments arising from any form of lead;
- f. Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of lead; or
- g. Any loss, cost or expense arising out of any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED-OWNERS, LESSEES OR CONTRACTORS (WITH OPTIONAL COVERAGE PROVISIONS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

SEE BELOW

Who is An insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only to the extent the additional insured is held liable for the Named Insured's negligent acts or omissions arising from occurrences directly caused by, and while in the course of the Named Insured's ongoing operations performed for that additional insured.

Optional Coverage Provisions applicable to the above. The selected option(s) is designated by a mark in the box to the left of the option.

OPTION A. The insurance provided by this endorsement shall be primary, but only in the event of the Named Insured's sole negligence.

OPTION B. The Insurance provided by this endorsement shall be primary and noncontributory, but only in the event of the Named Insured's sole negligence.

OPTION C. The insurance provided by this endorsement is amended to include any person or organization that the Named Insured has agreed and/or is required by contract to name as an additional insured, per schedule on file with company.

AUTHORIZED REPRESENTATIVE

Additional Premium S

DATE

Page 27 of 36

ENDORSEMENT

Attached to and forming a part of Policy No. BCS0008003
Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04 12:01 A.M., Standard Time Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASBESTOS EXCLUSION

The coverage afforded by this policy does not apply to bodily injury, personal injury or property damage arising out of:

- Inhaling, ingesting or prolonged physical exposure to asbestos or goods or products containing asbestos; or
- The use of asbestos in construction or manufacturing any good, product or structure; or
- The removal of asbestos from any good, product or structure; or
- The manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos.

The coverage afforded by the policy does not apply to payment for the investigation or defense of any loss, injury or damage or any cost, fine or penalty or for any expense of claim or suit related to any of the above.

AUTHORIZED REPRESENTATIVE

DATE

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Home Office Copy



ENDORSEMENT NO.

Attached to and forming a part of

Policy No. BCS0008003

Named Insured ARENA CONSTRUCTION COMPANY,

Endorsement Effective Date 05-03-04 12:01 A.M., Standard Time

Agent No. 31729

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RESIDENTIAL EXCLUSION

This insurance does not apply, either directly or as assumed by contract, for any lawsuits, actions or any other claim for liability for "bodily injury," "property damage" or "personal and advertising injury" ("personal injury" or "advertising injury") arising from or in any way relating to the insured's operations or interest or any other involvement in any condominium, townhouse, apartment building or residential:

- 1. Development;
- 2. Construction;
- 3. Reconstruction; or
- 4. Renovation

that occurs:

- a. Prior to inception of this policy;
- b. During this policy term; or
- c. Prior to the inception of this policy and that continues into this policy term.

This exclusion applies in the following state(s):

ALL STATES

AUTHORIZED REPRESENTATIVE

DATE

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ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY—RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

With respect to operations performed for, or affecting, a Railroad, definition "insured contract" of SECTION V—DEFINITIONS section is replaced by the following:

"Insured contract" means:

- a. A contract for lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement,
- c. Any easement or license agreement;
- An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for

"bodily injury" or "property damage" to a third person or organization. Tort Liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

AUTHORIZED REPRESENTATIVE	DATE

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Audit Premium means the premium for this Coverage Part that is developed by calculating the difference between the Advance Premium and the Earned Premium.

Earned Premium means the premium for this Coverage Part that is developed by applying the rate(s) in

the policy to the actual premium basis for the audit period.

Minimum Premium means the lowest premium for which this Coverage Part will be written for the policy period.

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1	X	SCOTTSDALE	INSURANCE	COMPANY

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	Attached to and Forming a part of Policy Number	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM AND ADVANCE PREMIUM/MINIMUM EARNED CANCELLATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

MINIMUM	PREMIUM	\$	
IASSIA MAI (C. 14)	LUCIMICIAI	₽	

Item 5. Premium Audit Condition of SECTION IV—COMMERCIAL GENERAL LIABILITY CONDITIONS, SECTION IV—LIQUOR LIABILITY CONDITIONS and SECTION IV—PRODUCTS/COMPLETED OPERATIONS LIABILITY CONDITIONS is replaced by:

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as Advance Premium is a deposit premium only. At the close of each audit period we will compute the Earned Premium for that period and a billing notice of any Audit Premium due will be sent to the first Named Insured. The due date for the Audit Premium is the date shown as the due date on the bill. If the sum of the Advance Premium and Audit Premiums is greater than the Earned Premium, we will return the excess to the first Named Insured, subject to us retaining a Minimum Premium as shown above in the Schedule, including any premium adjustments made by endorsement to this policy during the policy period.
- c. The first Named Insured must keep records of the information we need for premium computation, and provide us or our representative copies at such times as we may request. In the event the first Named Insured fails or refuses to allow us or our representative to audit your records, we may unilaterally charge an Audit Premium for the policy period at or up to double the Minimum or Advance Premium, whichever is greater, and such Audit Premium shall be immediately due and payable on notice to the first Named Insured.
- d. If you request cancellation of this Coverage Part or policy, we will retain not less than twenty-five percent (25%) of the Advance Premium.

For purposes of this endorsement, the terms Advance Premium, Audit Premium, Earned Premium and Minimum Premium are defined as follows:

Advance Premium means the premium for this Coverage Part that is stated in the policy declarations and payable in full by the first Named Insured at the inception of the policy.



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	ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	named insured	AGENT NO.
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SUBSIDENCE EXCLUSION

This policy does not apply to "bodily injury" or "property damage" caused by, resulting from, attributable or contributed to, or aggravated by the subsidence of land as a result of landslide, mudflow, earth sinking or shifting, resulting from operations of the named insured or any subcontractor of the named insured.

All other terms and conditions remain unchanged.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ENDORSEMENT

In the event Scottsdale Insurance Company fails to pay any loss which is payable under this policy as a result of its insolvency, Nationwide Mutual Insurance Company agrees it shall become liable for the loss after receiving written notice and demand for payment from the insured. Any payment shall be subject to and limited by the terms and conditions of this policy.

Nationwide Mutual Insurance Company

Styphen S. Brommen

President

AUTHORIZED REPRESENTATIVE

AFFIDAVIT OF SERVICE BY REGULAR MAIL

STATE OF NEW YORK)

: SS.

COUNTY OF NASSAU

JEANNE A. BLANCHARD, being duly sworn deposes and says:

Deponent is not a party to the action, is over Eighteen (18) years of age and resides in North Bellmore, New York.

On July 20, 2006 deponent served the within RULE 26 Disclosure by mailing the same in a sealed envelope, with postage paid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: JAFFE & ASHER, LLP Attorneys for Plaintiffs WAUSAU UNDERWRITERS INS. CO. and AXIS SPECIALTY INS. CO. 600 Third Avenue, 9th Floor New York, New York 10016 (212) 687-3000

> WILSON, BAVE, CONBOY, COZZA & COUZENS, P.C. Attorneys for Defendant **OBE INSURANCE CORPORATION** Two William Street White Plains, New York 10601

Sworn to before me this day of July, 2006

ELIZABETH PENAGOS Notary Public, State of New York No. 01PE5051168

Qualified in Nassau County Commission Expires Oct. 30,

WAUSAU UNDERWRITERS INSURANCE COMPANY AND AXIS SPECIALTY INSURANCE COMPANY,

Plaintiffs,

-against-

QBE INSURANCE CORPORATION AND SCOTTSDALE INSURANCE COMPANY

Defendants.

SCOTTSDALE INSURANCE COMPANY'S REPLY TO CROSS-COMPLAINT

KRAL, CLERKIN, REDMOND, RYAN PERRY & GIRVAN, LLP

Attorneys for

69 DEFENDANT, SCOTTSDALE INSURANCE CO.

MINEOLA, NEW YORK 11501

(516) 742-3470

§2103 (b) (5) Notice: Service of Papers by Electronic Means is Not Accepted

State, cert	to 22 NYCRR 130- tifies that, upon ir ocument are not fri	formation a						
Dated:			Signature		••••••			
			Print Signer's Nar	ne <u>I</u>	EONAR	D PORCEI	LI, ESQ.	
Service of	a copy of the withir	ı					is hereby	admitted.
Dated:								
	·		Attorr	vey(s) for				
PLEASE T	TAKE NOTICE							
NOTICE OF ENTRY	that the within is entered in the off			named Cou	rt on			20
NOTICE OF SETTLEMENT	that an Order of a Hon. at	vhich the wit	thin is a true co			for settlemen the within n		rt,
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Dated:								

KRAL, CLERKIN, REDMOND, RYAN PERRY & GIRVAN, LLP

Attorneys for

69 EAST JERICHO TURNPIKE MINEOLA, NEW YORK 11501

To:

9.16.04

BARNEY

SITE SAFETY EXHIBIT 13-B

JOBSITE INCIDENT REPORT

o Lost	roperty o.Damaged Property o Injury Fire
o Sysp	ected Crime or Offense o Any other unusual occurrence or condition (explain)
Frac	Contractor's Employee o BSCC Employee o Visitor a Public
naie.	fReport: SEPTEMBER 16, 2004
Daie,	report.
	Land 11 200 W D DERRY 0925
Date/	ime of Occurrence: SEPTEMBER 16, 200 4; @ APPROX. 0925
Projec	Name and Number: ST. George Ferry Terminal 2000/
Addre	S. 1 RICHMAND TERRACE, STATEN ZISTANO N.y
Where	Describe property involved: WEST ENTRANCE Elevator SHAFT
How	rief description of incident, give details: A CCORDING TO TWO (2) WITHERSES
11/2	THOU HOLLERS - JOHN MOORE TRON WORKER WAS PERSONALLE
لمرم	WART PROCESURES & WEST ENTRANCE EXCHITOR SANT, HE WAS
170	DING ON A SCAFFOLD WITH CHEM 2 NO ZION GENER WHEN HE
111	LADRE TO (TEP FROM SCAFFOLD ONTO ELEM TON SHAFT BLOCK CHILL
(8) / F. S.	DE OF WALL WAEN HE JOST HIS FOOTING AND FELL APPROX. 23 FEET
NYCF	plice Department Responding Name: OFFICE AIMONE Shield Number:
Precir	
Witne	Name: James Sulliann
	Address 52 ZARNIE//U LANE
	City, State: WEST HAVERSTRAW, NEW YORK 10993
	Phone: 1(845) 405-1426
	actor's Name: A.J MCNUITG
COMM	53-34 44 EF CT
.	
	City, State: MASPETA, N. 4 1/378
ı	Phone: (7/8) 784-1655
	D.O.B 9/14/55 1 Party Name: JOHA MOORE / AUNT KINSA//A (734) 495-2834
njure	Party Name: JOHA MOORE / 1727 /CINIA/M
-	30 PARICIA AVENUE
	City, State: North Mipple Town A. Jensey 077 48
1	Phone: (732) 787./078
	· (i full till ·
	Cos mendle
BSCC	Supervisor on-site: SEAN MECALLA
Propo	red by Name: M. LEAE CAM 25
_	

SITE SAFETY

Title: S: 76 SAFATY 1'ME TON

Te: M.A. My 4 Date: 9-16-04

WITNESS #2

ROBERT CORREDOR

29 NEPTUNE AUE

NEW ROCHETTE, NY 10805

1(914) 654-0133

FROM PACE ONE: DISTANCE FROM SCAFFORD TO BLOCK WAS APPROX. 2/2 FTG3 2"

ZRON. WORKER SUSTAINED MUSTIPLE LABORATIONS AND BRUISES

WAS TAKEN TO ST. VINCENT HOSPIRM AND FROM ALL REPORTS

FOR IS IN GOOD STABLE CONDITION WITH AD SCAFERS ON LIFE

THREATENING ZN JUNIES & THIS TIME.

An/pen # 2659713

A.J. Mc NULTY & CO., INC.

53-20 44" Street, Maspeth, New York 11378 (718) 784-1655 Fax (718) 784-3889

9.16.09

ACCIDENT REPORT

DA	TE:	44	JOB: St George Ferry Terminal 1864
	1.	Nam	of Injured: JOHN MODE
	2	Addr	es of Injured:
,	3. <i>A</i>	Age:	Date of Birth: SS#
4.	c	Decuj	ation: IRON Worker Local:
5.	P	lace	Where Accident Occurred: New Steel Agen Date & Time: \$16 04
6.	N	ame	of Foreman: NorMan Pryce Was Foreman Notified?
ð. 8.	It H		ausing Injury: Orl Cut. Brick Wall Was Safety Device Available? YES Wid The Accident Occur? IRON WORKERS Were Connecting a Brown. A Consete
	b	ric	wall was in way of work. John Moore goes to step on brick
	9	na	brick collapses, sending worker down 23'z" Hole.
9.		18	Vas The Employee Doing When Injured: going from a scutfold to a brick wall
16		- 1	of Witnesses: James Sullivan, Robert Corredor, Michael Grico
		1	oriniary: Broken Elbow, concussion, possible Fib factures
12	. Ne	m &	Address of Physician/Medical Center: St. Vincenty Medical Center
		- 11	ared Employee Lose Time? 765
. 14.	. Ho	wĘo	uld the Accident Have Been Avoided? Labour Should have removed concerte
.cbsr.	ed By)	James M. Sullivan Signed By: Garren M. Sullivan
			(A-1)